

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 10:39 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

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20	Order Granting in Part Motion to Coordinate Cases for Preliminary Injunction Hearing	7/11/19	AA 004938 - AA 004940
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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 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
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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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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **APPELLANT NEVADA ORGANIC REMEDIES, LLC'S OPENING BRIEF** was filed electronically with the Nevada Supreme Court on the 17th day of January, 2020. Electronic service of the foregoing document shall be made in accordance with the Master Service List as follows:

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1 making it competitive, does that give any advantage to
2 Canadian companies or international companies over perhaps
3 Nevada companies?

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

6 THE COURT: Overruled. You can answer.

7 THE WITNESS: Can you repeat the question again for
8 me?

9 MR. PARKER: Yes.

10 BY MR. PARKER:

11 Q As opposed to having the threshold amount, \$250,000,
12 being a pass or fail, either you have it or you don't, by
13 making that a competitive process with regards to amounts
14 above \$250,000, did you give the distinct -- mean to or
15 purposely mean to provide an advantage to international
16 companies outside of Nevada?

17 A No.

18 Q Do you believe that it had that effect of giving
19 larger companies that advantage?

20 A No.

21 Q Okay. So, for example, a local Nevada company
22 provides you with the name of its three owners, provides you
23 with financial information indicative of the ability to
24 financially conduct or operate a marijuana establishment, and
25 then you have a Canadian company or an international company

1 come in and it has assets that far exceed any local company,
2 any local company. Do you not believe that that company now
3 has an advantage simply because they can pull on resources
4 unrelated to the marijuana establishment it intends to operate
5 here?

6 A No. There are limits to the scoring in multiple
7 areas where they were to be scored.

8 Q Are those a part of the scoring tool?

9 A Yes. There are lots of metrics in the scoring tool.

10 Q So what were the layers in terms of financial
11 liquidity?

12 A I don't recall. I'd have to look at the --

13 Q Were you in charge of that or someone else?

14 A No, somebody else was in charge of that.

15 Q Who was in charge of that?

16 A Steve Gilbert, I believe.

17 Q Okay.

18 A And Jorge Pupo possibly.

19 Q Would the same be true in terms of the education
20 requirements? So I believe an excellent answer in terms of
21 that part of the application was everyone having a Bachelor's
22 Degree and perhaps even a Master's Degree. Do you recall
23 that?

24 A I'd really need to look at the scoring tool.

25 Q Did you work on that section?

1 A No.

2 Q Or was that also Steve Gilbert?

3 A No, it was not me.

4 Q Do you know who it was?

5 A It was -- I know that it was provided to me by Steve
6 Gilbert. I don't know who all worked on it.

7 Q All right. You said that you designed the training
8 for the evaluators?

9 A I did.

10 Q Okay. What portion of the training did you design?

11 A I adjusted the history sections so that they were
12 relevant to today. Then I worked on who would be assisting
13 the evaluators and teaching the evaluators when.

14 Q Let me -- in terms of history I think you've gone
15 over that.

16 A Yeah.

17 Q In terms of teaching the evaluators, were there any
18 evaluators teaching the evaluators?

19 A No, sir.

20 Q All right. And you said make sure evaluators had
21 everything they needed. In terms of something that came up
22 yesterday that the judge honed in on that I thought was very
23 important, owners and their disclosure of information in terms
24 of prospective owners, did you understand those questions
25 yesterday that the judge further inquired into in terms of

1 prospective owners? Do you remember that?

2 A I don't recall.

3 THE COURT: That was this morning, Mr. Parker.

4 MR. PARKER: It seemed like yesterday.

5 THE COURT: It seemed like yesterday.

6 THE WITNESS: If you're talking about today --

7 THE COURT: I was only reading the statute today.

8 MR. PARKER: It seems like a long day.

9 THE WITNESS: I recall the conversation. I'm not
10 sure I fully understood.

11 MR. PARKER: Okay.

12 THE COURT: It was during the motion to compel.

13 MR. PARKER: That is correct

14 THE COURT: Okay.

15 MR. PARKER: Thank you, Your Honor.

16 THE COURT: And he was in the room.

17 MR. PARKER: He was in the room because I asked him
18 -- I wanted him to leave.

19 THE COURT: Because you objected and I said it was
20 okay for him to stay.

21 MR. PARKER: You did. You did.

22 THE COURT: And he was bored stiff.

23 MR. PARKER: And now I'm glad you asked him to stay
24 because now I can ask him the question.

25 //

1 BY MR. PARKER:

2 Q So in terms of providing the evaluators with
3 everything they needed, was there someone involved who would
4 do the leg work or the research to determine whether or not
5 all the owners are the owners, or all the owners are giving
6 you all the information they have with regards to their
7 ownership? The Administrative Code indicates 5 percent or
8 greater had to be identified as owners. Are you aware of
9 that?

10 A It sounds familiar.

11 Q All right. And so if Company ABC provides ten
12 owners, is there someone working on behalf of the DOT
13 assisting the evaluators to actually determine if that is the
14 extent of the ownership?

15 A We did not seek additional information beyond what
16 was provided in the application.

17 Q All right. So to the extent that there are actually
18 5 percent owners of any of these companies that were not
19 disclosed, would that be a material violation of the
20 application process?

21 A We did not evaluate the applications -- we evaluated
22 the applications based on the information that was provided.
23 That's all I can say about that process because that's all I
24 know about the process that we engaged with the evaluators.
25 Here's the application, here's the information in the

1 application; please evaluate it.

2 Q Let me ask it this way, because I understand that
3 you are telling me now and everyone here that you confined the
4 review to the information provided in response to the
5 application. Understood. The question before you, however,
6 is if that application information was incomplete or simply
7 wrong, is that a violation or a breach of the application
8 process?

9 A I would need to look at the statute.

10 Q All right. Is there a penalty for failing to
11 disclose or providing incomplete information in the
12 application process, to your knowledge?

13 A Again, I'd have to look at the statute.

14 Q Did you provide -- and when I say you, I'm talking
15 more now the Department of Taxation with the people you were
16 working with, did any of you provide the evaluators with any
17 background information related to any of the companies that
18 submitted applications?

19 A I did not.

20 Q Do you know if any of your colleagues did?

21 A I do not know. You'd have to ask them.

22 THE COURT: So, we're going to take a short break at
23 this time. This is a requested break under the BrightSource
24 case.

25 MR. PARKER: Thank you.

1 THE COURT: Ten minutes?

2 MR. PARKER: Sounds good.

3 THE COURT: Mr. Parker, are you almost done?

4 MR. PARKER: I only have maybe ten minutes more,
5 Your Honor.

6 THE COURT: Okay.

7 (Court recessed from 2:31 p.m., until 2:39 p.m.)

8 THE COURT: Okay. Are we ready? Mr. Parker, did
9 you want to ask your few followup questions you had?

10 MR. PARKER: Well, you know, as soon as I walk away
11 from the podium --

12 THE COURT: I understand.

13 MR. PARKER: -- you know, I got a few additional
14 questions thrown upon me.

15 THE COURT: So you had Post-It notes handed to you,
16 huh? And notes written on your legal pad. It's amazing.

17 MR. PARKER: Exactly. You've done it before. Well,
18 the best thing is anything I'm doing now, Judge, I know you've
19 had it before, you've dealt with it, including this group on
20 both sides of the bench.

21 MR. PARKER: We can continue on and look at Exhibit
22 5, Your Honor. I want to help Mr. Plaskon.

23 THE COURT: And that's the tool; right?

24 MR. PARKER: I believe it is the application.

25 THE COURT: All righty. Thank you.

1 (Pause in the proceedings)

2 MR. PARKER: I believe it's Exhibit 5, I think
3 page 7 -- page 11.

4 THE COURT: That's the one I'm on.

5 MR. PARKER: Perfect.

6 THE COURT: Mr. Hymanson, you're late.

7 (Pause in the proceedings)

8 THE COURT: Okay. Sir, are you there?

9 THE WITNESS: I am.

10 THE COURT: Great. He's highlighted some stuff for
11 you on point. 5.2.10.1.

12 MR. PARKER: I don't think it's intervening. It's
13 [inaudible].

14 BY MR. PARKER:

15 Q Are you familiar with this?

16 A Looks like Tab X, yes.

17 Q And when we left off we were discussing the
18 requirement of applicants to provide information to provide
19 information related to their owners and percentage of
20 ownership of each individual. You see that?

21 A Yes, sir.

22 Q All right. So the question I had for you was
23 whether or not there's a penalty if an applicant did not
24 comply with this provision.

25 A And I think my response was that I'd need to look at

1 the regulations.

2 Q So if we were to look at NAC 453D.2255 [inaudible]
3 is the one I'm looking for.

4 MR. PARKER: Your Honor, do we have that anywhere?

5 THE COURT: I don't have it. I keep statutes. I
6 don't keep regs.

7 BY MR. PARKER:

8 Q NAC -- I'm sorry. 453.255.

9 THE COURT: Would you like us to turn the Elmo on,
10 to switch it on?

11 MR. PARKER: It's on.

12 THE COURT: Okay.

13 (Pause in the proceedings)

14 BY MR. PARKER:

15 Q All right. Here we go. How many lawyers to screw
16 in a light bulb?

17 So are you familiar with this?

18 MR. PARKER: And it's not on his screen, Your Honor.

19 THE COURT: Why not?

20 MR. PARKER: I don't know.

21 (Pause in the proceedings)

22 BY MR. PARKER:

23 Q So doesn't this regulation require that -- requires
24 a person with aggregate ownership interest of 5 percent or
25 more?

1 A Your question is doesn't this require --

2 Q The disclosure of anyone with an ownership interest
3 of 5 percent or more.

4 A With the exception of "if public interest will be
5 served," I'm not -- I'm not a lawyer, so I'm sorry, I can't
6 interpret this for you.

7 Q Well, Mr. Plaskon, you asked me to show you the
8 regulation, because when I asked you the question without the
9 benefit of the regulation you said, I would need to see the
10 regulation. So then --

11 A I can't interpret it.

12 Q So then I put it in front of you, and now your
13 position is you can't interpret it?

14 A No.

15 Q Good enough. So if you can't interpret it, did you
16 expect the evaluators that you helped train to be able to
17 interpret it?

18 A No. The evaluators were not expected to interpret
19 the regulations.

20 Q So if the evaluators didn't know the requirements of
21 the regulation, and the evaluators didn't know the requirement
22 in terms of disclosure of individuals with ownership interest,
23 how did you expect this application process to be evaluated
24 without providing that information?

25 A The information was provided to evaluators for them

1 to then come up with a score.

2 Q No, no. How would they know if the disclosures were
3 complete?

4 A We didn't seek information beyond what was provided
5 in the application.

6 Q Isn't it true, sir, that in fact they would not know
7 if the disclosures were complete because no one provided an
8 interpretation of the NAC and no one provided backup
9 information to determine if every publicly held corporation's
10 owners, at least 5 percent or greater, was actually disclosed?
11 Isn't that a true statement, sir?

12 A No.

13 Q What part of that is not true?

14 A You would need to talk to Jorge Pupo or Steve
15 Gilbert to know whether the interpretation was provided to the
16 evaluators through the application itself.

17 Q Okay. Sitting here --

18 A And through the organization -- and through the
19 scoring tool, as well.

20 Q You would agree with me that to your knowledge no
21 one at the DOT provided any background information with regard
22 to the veracity of the disclosures of owners of any of
23 publicly held companies relative to this NAC or the scoring
24 tool we had up a little while ago -- I'm sorry, the
25 application provision we showed you a few minutes ago.

1 A That no one provided guidance and -- I'm losing you
2 in the length of your question there.

3 Q No one provided any backup information -- the DOT
4 did not do an investigation to ensure that the evaluators
5 could look at the disclosures from the applicants and then
6 look at their ownership makeup to determine if they were the
7 same?

8 A We did look at their ownership.

9 Q You looked at what was provided in the application.
10 I'm asking --

11 A And their current ownership.

12 Q Okay. Tell me how you looked at their current
13 ownership.

14 A We keep records of their current ownership, and so
15 we would go into our records and pull the applicant and look
16 at the ownership.

17 Q Let's make sure we're on the same page. What
18 records would you have kept of a new applicant, not an
19 applicant who perhaps -- strike that.

20 How would you keep records of these applicants'
21 ownership interest?

22 A Computer.

23 Q Or would [unintelligible].

24 A In a computer. And paper files.

25 Q You said earlier -- I'm sorry. Mr. Plaskon, you

1 said earlier that you relied solely on the information in the
2 application. Didn't you say that?

3 A We did. We did.

4 Q All right. How did you verify that information?

5 A We have ownership records.

6 Q Okay. Where do you keep these ownership records?

7 A In Carson City.

8 Q And did you receive or do you have all the ownership
9 interests for Essence?

10 A We published all the owners on our Website.

11 Q Would that information be available to your counsel?

12 A It is available to all the public, yes. Everyone.

13 Q No. I'm talking about the information that you had,
14 that you used to check.

15 A Yes.

16 Q All right. And where would I get that information
17 from if I wanted it?

18 A You would have --

19 Q So, for example, let's say you wanted to check into
20 Nevada Wellness Center. Nevada Wellness Center identified
21 three owners. How would you verify that those are the only
22 owners for Nevada Wellness Center?

23 A We would look at our ownership records.

24 Q Okay. And you would have -- you would maintain
25 ownership records on every applicant?

1 A Yes.

2 Q So if they disclosed to you 10 owners, you would be
3 able to go look at their records and be able to determine that
4 those are the only 10 owners?

5 A Yes.

6 Q So in the example given by Mr. Kemp if in fact a
7 company is owned by another company, would you be able to look
8 up the owners of that company, as well?

9 A I don't know. You'd have to talk to the program
10 officer in charge of the transfer of interests section.

11 Q And would you know the percentage of ownership of
12 each of the owners disclosed?

13 A You'd have to talk to the program officer in charge
14 of that section.

15 Q Okay. So you don't know sitting here today whether
16 or not any of that was done, the percentage of ownership or
17 whether or not another company owning a company has disclosed
18 all of those owners, as well, with at least a 5 percent
19 interest?

20 A I don't know.

21 Q Thank you.

22 Now, the other question that I asked you that I
23 wanted to pull up an exhibit on is Exhibit 7, page 4. I asked
24 you about this word "compassion" earlier. Do you recall that?

25 A Yes, sir.

1 Q Do you see here the second-to-the-last line in front
2 of you?

3 A Yes, sir.

4 Q All right. Now --

5 THE COURT: Mr. Parker, Jill can't hear you there.
6 You know better and have to go back to the podium.

7 MR. PARKER: I do. I do.

8 BY MR. PARKER:

9 Q Can you read for me that last line.

10 A Looking for the beginning of the sentence here.
11 Just the last line, "...success the compassionate use of
12 marijuana to treat conditions."

13 Q Okay. Does the word "compassion" or "compassionate"
14 come from a 2014 application?

15 A I don't know. I'd have to look at the 2014
16 application.

17 Q Is it related to a recreational -- the operation of
18 a recreational marijuana establishment?

19 A I'd have to look at the statutes.

20 Q Sitting here right now you don't know?

21 A No, I don't.

22 Q Okay. You don't know how it ties in in any way?

23 A No.

24 Q Did you have any role in terms of this portion of
25 the application?

1 A This is the scoring tool, and I had no role in the
2 scoring tool.

3 Q Okay. Do you know why diversity was included?

4 A Because it's in NRS 453D.200 demonstrably something
5 or another to the operation of a facility, marijuana facility.

6 Q Okay. It's also in the Administrative Code; is that
7 correct?

8 A It is.

9 Q All right. And do you know what the goal was in
10 terms of adding diversity as a part of the application
11 process?

12 A No.

13 Q Do you believe or do you have any understanding that
14 diversity was added to in fact facilitate or encourage
15 diversity in the ownership of marijuana locations?

16 A That's goal. That's what the statute says and Codes
17 say. So that's in the application.

18 Q All right. Do you know if a single minority owner
19 was successful in this 2018 application process?

20 A Our analysis showed that 50 -- over 50 percent of
21 the winning applicants had diversity of ownership on an
22 owners, officers, and board members. That statistic's
23 available -- the exact statistic's available on our Website
24 tax.nv.gov.

25 Q Okay. Let me ask it one more time, because you

1 added a lot of things to your response that were not included
2 in my question.

3 Do you know of a single owner, not a officer, not a
4 board member, but an actual owner, someone who has an equity
5 interest perhaps in a company that is a minority that was
6 successful in this 2018 application process?

7 A No. That would require some research.

8 Q Would you be surprised if not a single minority
9 owner was successful in the 2018 application process?

10 A I would be surprised.

11 Q Would you also be -- would you also agree with me
12 that if the goal was what you said it was, that that goal was
13 not achieved by the manner in which this application process
14 was conducted?

15 A No, I would not agree with you.

16 Q Now, over the break you had a little bit of time to
17 consider perhaps some of the questions I asked. I want to go
18 back to one, because I'm truly interested in getting the
19 answer to this question. If you don't know, that's fine.

20 Do you believe there should be some penalty for
21 providing incomplete or simply wrong information in this
22 application process? And let me preface it with this. You
23 said yesterday, I think it was yesterday, that there is such a
24 thing called a False Claims Act. Remember that?

25 A I don't. I'm sorry. There's been a lot of --

1 Q It's something false. I thought it was something
2 akin to the False Claims Act, which I'm familiar with, having
3 done construction work. But there is such a thing that
4 relates to providing false information to a governmental
5 agency. You consider the submission of an application to the
6 Department of Taxation a governmental agency application;
7 right?

8 A Yes.

9 Q And there should be some penalty for providing false
10 or incomplete information to a governmental agency like the
11 Department of Taxation; isn't that correct?

12 A There are penalties for that.

13 Q Right. Can you tell me what penalties there are for
14 such an incomplete or wrongful submission of information on an
15 application to a governmental agency like the Department of
16 Taxation?

17 A I would need to look at the statute, and then I
18 would need to speak to my supervisors on whether it's accurate
19 or not.

20 Q At a minimum aren't you familiar with the fact that
21 if you submit a incomplete or wrongful document to a
22 governmental agency, at the very least that document can be
23 stricken, that the application can be stricken?

24 A I'm not aware of that.

25 Q In your tenure at the Department of Transportation

1 -- I'm sorry, Taxation have you ever penalized someone for the
2 submission of incomplete or wrong information in the form of
3 an application or a transfer of ownership or anything I that?

4 A That's not my job.

5 Q Oh. This is a question I wanted to -- I thought was
6 going to come up, but has not. Who made the decision to hire
7 Manpower?

8 A That's available on our Website. I don't recall
9 right now, but you can read it at tax.nv.gov. There's a big
10 banner. It's got a locked document on it -- unlock document.
11 Click on that, and then it'll explain the [inaudible].

12 Q So you don't know who made that decision or why that
13 decision was made?

14 A I don't recall.

15 Q Year, who made it, and why?

16 A No.

17 Q Yesterday Mr. Kemp asked you about the evaluators'
18 experience in terms of being a CPA or performing audits. Do
19 you recall that line of questioning?

20 A I do recall that.

21 Q Did you review the qualifications of any of the
22 evaluators in terms of their construction knowledge?

23 A I posted it I think on the Website. Did I review
24 it?

25 Q Yes.

1 A When?

2 Q Prior to hiring those individuals.

3 A I don't recall.

4 Q All right. To your knowledge did any of them have
5 any construction or development experience?

6 A Yes.

7 Q Can you tell me who?

8 A I don't recall her name. I'm sorry.

9 Q It was only one person?

10 A It was a she. Yes.

11 Q Okay. Only one person that you can recall?

12 A That I recall, yes.

13 Q O. So in terms of the adequacy of building size,
14 locations, would that one person with that type of experience
15 evaluate all applicants on that, with regards to that
16 provision or that section?

17 A That wasn't the only person who would evaluate those
18 sections, if that's what you're asking.

19 Q No. I'm asking if the only person who had that
20 experience would evaluate that section for all applicants.

21 A No.

22 Q So there were other people who did not have that
23 experience that evaluated that section for some applicants?

24 A Yes.

25 MR. PARKER: Okay. All right. Your Honor, I think

1 that may be it. Let me confer with --

2 THE COURT: Any other interveners have any more
3 questions after Mr. Parker confirms he's completed?

4 MR. SHEVORSKI: I think you meant plaintiffs, Your
5 Honor.

6 THE COURT: I'm sorry. Plaintiff.

7 Mr. Shevorski, you're up.

8 MR. SHEVORSKI: Thank you, Your Honor. And I'll
9 continue with my previous practice of being quick.

10 CROSS-EXAMINATION

11 BY MR. SHEVORSKI:

12 Q Good afternoon, Ky. I know it's been a long day.
13 I'll try to ease your suffering by being quick.

14 The Judge has a statute book by her, and if you'd be
15 so kind as to find NRS 453D.210.

16 THE COURT: Would you like me to hand it to him?

17 MR. SHEVORSKI: Yes, Your Honor, if you'd be so
18 kind.

19 THE COURT: Here you go, sir. And there's a thing
20 in the back called a pocket part.

21 MR. SHEVORSKI: May I approach, Your Honor?

22 THE COURT: You may. I have it up on my computer
23 screen, but, you know.

24 MR. SHEVORSKI: We're on subpart (6), Your Honor.

25 THE COURT: .210, or .200?

1 MR. SHEVORSKI: .210. 453D.210(6).

2 THE COURT: Okay.

3 BY MR. SHEVORSKI:

4 Q Ky, you've just been handed a copy of the Nevada
5 Revised Statute. I believe it's up to date. Has a what's
6 called a pocket part. That's where the people who make the
7 books put in updated information. I'll represent that to you.
8 We try to make it as updated as possible, but -- looks like
9 they did a pretty good job.

10 So if you'd turn your -- take a second to review
11 that, and specifically I'm going to ask you about subpart (6).

12 A Okay. Yes, sir.

13 Q Are you there?

14 A Yes, sir.

15 Q Okay. Do you recall Mr. Parker was asking you a
16 question about pass/fail? Do you recall that?

17 A Yes.

18 Q To the financial scoring. I'm going to read subpart
19 (6), and then I'm going to ask you a question about it.

20 "When competing applications are submitted for a
21 proposed retail marijuana store within a single county the
22 Department shall use an impartial and numerically scored
23 competitive bidding process to determine which application or
24 applications among those competing will be approved."

25 Your understanding of numerically scored, is that

1 consistent or inconsistent with pass/fail?

2 A Inconsistent.

3 Q Why is that?

4 A Pass/fail is not numerically scored.

5 Q Now, my friend Mr. Parker did a lot of my job for me
6 and talked to you about what you actually did. We had a lot
7 of questions over almost two days now about things that you
8 didn't do, but I want to talk a little bit about what you did
9 and specifically with respect to your interest in teaching and
10 the application process in 2018.

11 With respect to your interaction, you personally,
12 with Manpower, when approximately did that begin?

13 A August --

14 Q And I don't mean to the day.

15 A August of 2018.

16 Q Yeah. I don't need a specific day. Just August of
17 2018?

18 A Yes.

19 Q And what was that initial interaction?

20 A Welcoming them to the Department.

21 Q So they'd already been retained at that point?

22 A Yes.

23 Q And with respect to -- I believe you mentioned
24 there's some training involved with Manpower. Was that over a
25 period of weeks, a period of days? How long did that go on?

1 A It was designed to go over a period of weeks, and
2 extended longer.

3 Q Okay. So let's start with -- if you wouldn't mind,
4 there is an exhibit book, and I'm going to talk about Exhibit
5 2001. It should be behind you.

6 (Pause in the proceedings)

7 BY MR. SHEVORSKI:

8 Q Are you there at Exhibit 2001?

9 A Yes, sir.

10 Q Okay. If you wouldn't mind going to -- at the
11 bottom of the pages -- lawyers have lots of names for things.
12 One of them is a Bates number. There are numbers at the
13 bottom right. And the one I want you to go to is 2048.

14 Before you get there let me ask -- I forgot to ask
15 you a question. Have you seen Exhibit 2001 before?

16 A Yes.

17 Q And what do you recognize it to be?

18 A Training materials for the evaluators -- well, let
19 me look at the beginning of this thing.

20 Q Why don't you look at the first page.

21 MR. SHEVORSKI: And that's, for the record, Your
22 Honor, 2000.

23 THE COURT: I see that.

24 THE WITNESS: It looks like this is the first day of
25 training. We started with this.

1 BY MR. SHEVORSKI:

2 Q Did you help prepare these materials, sir?

3 A Yes, I did.

4 Q Now if you wouldn't mind going to 2048.

5 A Yes, sir.

6 Q And on the indication there it looks like it's

7 describe -- says "Ky and Steve." I assume Ky is you.

8 A Yes, sir.

9 Q Okay. And it looks like this is a week's worth of

10 program. And I want to go through the parts you know about of

11 what the program was to help train Manpower. So let's start

12 with from your recollection what was going on on Monday?

13 A On Monday was the orientation to the Department,

14 getting their badges, security checks, understanding

15 confidentiality, which is something that we went over every

16 single day, getting their badges, their backgrounds done, and

17 then moving on to history and the Marijuana Enforcement

18 Division activities and what it is that we do.

19 Q Okay.

20 A And I led that. Steve was there during it.

21 Q And Mr. Gilbert was there, as well?

22 A Yes.

23 Q Anybody else from the Department there that day?

24 A I believe Program Officer Diane O'Connor was there.

25 Q And what --

1 A Possibly Janine Warner, as well.

2 Q I apologize for interrupting you. What, if
3 anything, did Diane do that you recall?

4 A We worked together in assisting the evaluators with
5 whatever needs they may have along the way.

6 Q And what do you mean by whatever needs they may
7 have?

8 A If they identified that they needed paper, more
9 applications, things of that sort.

10 Q And you say applications. What do you mean by that?

11 A We had to bring them their applications. So they
12 came into the Department, we made sure that they didn't have
13 any viruses on the thumb drives that came in, and then we
14 stored them. And then as the evaluators needed applications
15 we brought them applications.

16 Q Are these mock applications, or are these -- you're
17 not talking about applications for retail license, are you?

18 A That was -- the retail applications that we brought
19 were later, after the application period. The mock
20 applications were something that I prepared.

21 Q And what was a mock application?

22 A Mock applications were applications from 2014 and
23 2016. They were actual applicants from applicants that ranged
24 anywhere from 80 pages, I believe, all the way up to 1300
25 pages and possibly more that were used to familiarize the

1 evaluators with the application process.

2 Q And how, if at all, did the Department provide those
3 mock applications to the evaluators?

4 A We made three copies of each one for all of the
5 evaluators, and then we walked them through them, starting
6 with a real basic Application A that was very, very small, and
7 increased in complexity following that initial introduction.

8 Q When you say we who do you mean by that?

9 A The Department of Taxation. Steve Gilbert, Ky
10 Plaskon, Diane O'Connor, Kirsty McCleary made the copies for
11 us.

12 Q Were there any other Department employees who were
13 assisting in going through the mock applications, for example,
14 Damon Hernandez?

15 A Karalin Cronkhite, Damon Hernandez, and Dave
16 Witkowski assisted in going through the applications.

17 Q Based on your understanding what, if any, purpose
18 was that to have, different individuals participate in that
19 training process?

20 A The more one-on-one work that they can do together
21 the better. So initially you start with an introduction,
22 here's the application, here's the application scoring tool,
23 real basic. They familiarize themselves with it. You have
24 some one-on-one instruction, and so it was two to one, one
25 staff employee for the every two evaluators helping walk them

1 through every aspect of the applications and applying the
2 scoring tools, being able to ask questions eight hours a day
3 for nearly three weeks on these extremely complex
4 applications.

5 Q I believe you're speaking from a pedagogical
6 perspective. Is it -- did each individual Department employee
7 bring something different to the table in terms of expertise
8 to assist in that evaluation?

9 A Yes. Karalin Cronkhite has experience with health
10 and safety. Damon Hernandez has a lot of experience with
11 metric and compliance. And Dave Witkowski as an inspector.
12 They carry knowledge that is similar among all of them, as
13 well as some expertises or specifics in those areas. I'm
14 sorry. "Expertises" is not really a word.

15 Q I was into it. Great use of the word.

16 So we looked at week one. Now, was that a -- how
17 long was that -- did that week last? Was that a calendar
18 week, was that seven days, five days?

19 A Yes. I believe somewhere in here there may have
20 been a -- I believe that first week was a full week. Yes, a
21 full week.

22 Q So the first week was a full week. When did the day
23 start, when did it end?

24 A We started at 8:00 a.m. and ended at 5:00. That's
25 my recollection.

1 Q But you weren't there every single day, were you?

2 A No, I was not.

3 Q But that was the plan, to start -- as far as you
4 know, start at 8:00, end at 5:00?

5 A Yes.

6 Q Okay. Would you turn to the next page. For the
7 record, 2049. Are you there, Ky?

8 A Uh-huh.

9 Q That's a yes?

10 A Yes. Sorry. I had a mouthful of water. Excuse me.

11 Q And it looks like -- from what I can see here,
12 correct me if I'm wrong, it looks like the week started on a
13 Tuesday.

14 A That's correct.

15 Q Do you know why that was?

16 A I think Monday was a holiday.

17 Q And what, if anything, to your knowledge did the
18 Department do to work with the evaluators, for lack of a
19 better term, during the second week?

20 A During the second week, if you take a look at 1A,
21 they were going step by step through the applications.
22 Karalin Cronkhite and Damon Hernandez were working
23 specifically with the application evaluators page by page
24 using the scoring tool and applying it to the application,
25 taking detailed notes on the scoring tool just as they would

1 do during application periods. So modelling the behavior from
2 a pedagogical [sic] standpoint.

3 Q Okay. And were those -- those days Tuesday through
4 Friday, when did they start and when did they end?

5 A 8:00 a.m. and ended at 5:00.

6 Q And to your knowledge did they keep to that
7 schedule?

8 A Yes.

9 Q Now, I believe your testimony just now was that they
10 also past this two-week period continued training. How do you
11 know that, and what training did they do?

12 A The mock applications continued. We had lots of
13 mock applications. And I'm sorry I don't recall the exact
14 number, but I know that it more than 12 mock applications.
15 And the aware able to get through a number of them with our --
16 those who taught on those sections, and then they were able to
17 continue this practice period exhibiting the modelling
18 behavior that our staff had demonstrated.

19 Q And when you're talking about the work -- so this
20 continued the third -- the third week. Let's talk about
21 during this time period, any time during the week one, week
22 two, week three. What are some of the materials that are
23 being provided to the Manpower employees in terms of are they
24 looking at regulations, are they looking at the statute, are
25 they looking at historical materials? Can you describe that.

1 A Yeah. I think that we transferred our culture that
2 we have in the Department of asking lots of questions to these
3 -- to the evaluators. So they were expected to ask any
4 question that came up in their mind as they were going through
5 this, why is this in the application and how is it applied.
6 So they had access to the laws and were often pointed to the
7 section that applied and why the information was in the
8 application that they were requesting.

9 Q Can you turn to Exhibit 2002, please, in the same
10 binder.

11 A Okay.

12 Q It should have a tab on it on the side.

13 A Oh.

14 Q There's a tab that says 2002. Let me know if you
15 need some help.

16 A It's not page 2002 inside 2001?

17 Q No. I'm sorry. I wasn't clear.

18 A Okay. I'm at 2002.

19 Q And take a moment to review it, if you wouldn't
20 mind.

21 A Okay.

22 Q Have you seen Exhibit 2002 before?

23 A Yes, sir.

24 Q And what is it? What do you recognize it to be?

25 A This was the training PowerPoints that I used for

1 our own staff to be familiar with the process that we would be
2 going through in terms of the education of the evaluators.

3 Q And when did you show this -- is this a PowerPoint
4 presentation?

5 A Yes, it is.

6 Q When did you use this document with your -- you said
7 your own staff. What do you mean by that?

8 A With Steve Gilbert, Diane O'Connor, Janine Warner.
9 I think they were the -- and there may have been Karalin
10 Cronkhite and Damon Hernandez on the phone. I don't recall.

11 Q Okay. And how, if at all, did you use this
12 PowerPoint with those persons you just listed?

13 A I used it to explain the training process for
14 evaluators.

15 Q How the training was going to go with the
16 evaluators?

17 A Yes.

18 Q And so this took -- this presentation to the
19 Department personnel took place before the Department met with
20 the evaluators to start the three-week process we discussed?

21 A That's correct.

22 Q Can you turn to Exhibit 2003. It's on -- using the
23 same tab method we've been talking about. And this is a long
24 one. Can you take a moment to review it and let me know when
25 you're through or you've got a grasp of what it is.

1 A Yes. I am vaguely familiar with it.

2 Q Have you seen this document before?

3 A Yes, sir.

4 Q And what do you recognize it be?

5 A It was one of the days when we -- we worked on this
6 over multiple days. It's PowerPoints that were presented to
7 the evaluators, as well as our own staff, to provide the
8 evaluators with guidance on their -- on the process.

9 Q So Mr. Gilbert, Mr. Hernandez, Ms. Cronkhite might
10 use this document to assist training the evaluators during
11 that three-week time period?

12 A Yes.

13 Q Turn to Exhibit 2004, please.

14 A Yes, sir.

15 Q And this one starts out, "Ky back on Monday." Do
16 you know what that means?

17 A Yes.

18 Q What does that mean?

19 A I was on vacation, I believe.

20 Q You were on vacation?

21 A Yes.

22 Q Okay. When were you on vacation?

23 A I don't recall the exact dates.

24 Q Okay.

25 A I'm sorry.

1 Q Was it during the training of the evaluators
2 process?

3 A Yes.

4 Q What part did you miss?

5 A It was where they started to walk through -- they
6 had already gone through I believe one application possibly,
7 the mock applications. But it was where they were going
8 through the mock applications with Kara and Steve and Damon
9 and Dave.

10 Q So other Department personnel --

11 A Yes.

12 Q -- were participating in training the evaluators --

13 A Correct.

14 Q -- when you were gone.

15 Do you recall when you were talking to my friend Mr.
16 Gentile he was discussing that there was an interview that
17 took place a minute after I believe it was Pam had decided to
18 jettison her current position? And it raises the issue of
19 what was the Department doing, to your knowledge, if anything,
20 to monitor the progress and the needs of the evaluators while
21 the evaluation process was going on?

22 A I checked in with them multiple times per day to
23 talk to them about what needs they may have, and they were
24 encouraged to text message me or call me with whatever they
25 might need at the time or whatever challenges they might face,

1 if any.

2 Q Was there an occasion where an evaluator asked you
3 for something in terms of a resource that you didn't provide
4 it?

5 A No.

6 MR. SHEVORSKI: That's all I have, Your Honor.
7 Thank you very much.

8 THE COURT: Mr. Koch.

9 CROSS-EXAMINATION

10 BY MR. KOCH:

11 Q Good afternoon, Mr. Plaskon. It's been a long day.
12 I was going to go back, be more thorough, go to junior high
13 and high school, but I think I'll skip that in the interest of
14 time.

15 Let me understand. You started at the Department of
16 Taxation in February of 2018. That was the first time you
17 worked at the Department; is that correct?

18 A Yes.

19 Q All right. And if we can turn back to Exhibit 2001
20 that we looked at a moment ago. This is one of the training
21 packets. And page 2023 within that exhibit.

22 A Yes, sir.

23 Q This page of this exhibit describes your position as
24 the education information officer. Was that a specific title
25 that you had at the Department?

1 A I currently hold that title.

2 Q I've also seen you referenced as a media contact on
3 the Website, the Department of Taxation Website with respect
4 to marijuana. Is that a position, or is that part of this
5 position?

6 A That is part of this position that recently has been
7 transferred to a new public information officer.

8 Q Okay. Who is that?

9 A Eden Larsen.

10 Q All right. And with respect to your participation
11 in the training here it describes four items that you would be
12 responsible for. Does that accurately state what your
13 personal direct participation in this process was?

14 A Yes.

15 Q There have been lots of questions asked about
16 policies that were considered, regulations that were adopted
17 or decisions made on allocation of points. Did you make any
18 of those decisions yourself?

19 A No.

20 Q Turn to page 2033, same exhibit. It's a little bit
21 hard to see, because I think it's got a dark background. And
22 this says, "Questions. If we don't have the answers, we will
23 get them." Why was this part of the training?

24 A It's very important to encourage our evaluators to
25 -- and administrative assistants to ask as many questions as

1 possible.

2 Q As part of the culture?

3 A Yes.

4 Q A lot of questions about not being certain about how
5 something would be applied, was that unexpected that an
6 evaluator or somebody who's part of the process might not have
7 certainty from the beginning?

8 A It was not unexpected.

9 Q And did you or the Department do its best to answer
10 questions that an evaluator or someone may have?

11 A Yes, sir.

12 Q Page 2054, please. 2054 says "Finder crew." What
13 does that refer to?

14 A This section of the training was not used. This
15 page would have had them find others that were of similar
16 experience either in building fire IT or an MJ inspector or an
17 accountant and work as a team with that group. We didn't end
18 up doing this.

19 Q You didn't do that. Okay.

20 Actually, before I move too much farther down, scoot
21 back to page 2010. 2010 begins a series of pages titled
22 "Confidentiality. The application process is strictly
23 confidentially." Why was that here up front in the training
24 materials?

25 A This was pulled from the 2014 application period.

1 It was important that the evaluators not be influenced in any
2 way and that they keep their work confidential. I believe
3 that Senate Bill 32 identifies anybody who pays a fee to the
4 Department of Taxation is a taxpayer, and taxpayer information
5 is confidential.

6 Q All right. Next page, 2011, titled "Confidentiality
7 is required." There's more discussions about confidentiality.
8 This was discussed with the evaluators?

9 A Daily.

10 Q Next page, 2012. It says, "Do not discuss on social
11 media, attempt to contact applicants directly, speak to media,
12 discuss any --" in bold "-- details with anyone outside of
13 your evaluation team, including your friends, family,
14 strangers, and other State of Nevada staff." Do you expect
15 the evaluators to comply with that instruction?

16 A Yes, sir.

17 Q Were you aware of any violations of that
18 instruction?

19 A No, sir.

20 Q Next page, "Confidentiality. When can you discuss
21 the evaluation process? With your evaluation team in the
22 evaluation room, formal meetings with the Division management
23 or State executives." Do you believe that the evaluators
24 complied with this instruction given in the training
25 [inaudible]?

1 A Yes.

2 Q Next page, "Confidentiality. This process is
3 extremely important to the State of Nevada." I'm on 2014.
4 "Breaches in confidentiality will be prosecuted." Were there
5 any prosecutions for breaches of confidentiality that you're
6 aware of?

7 A No, sir.

8 Q Next page, 2015. "Consequences for breach of
9 confidentiality. Termination of employment, lawsuits all can
10 invalidate an entire process." Any of those occur?

11 A No.

12 Q Ms. Evans, Pam Evans, was she terminated for
13 violation of confidentiality?

14 A No.

15 Q Ms. Evans, she was an administrative assistant; is
16 that right?

17 A Yes.

18 Q She was replaced?

19 A Yes.

20 Q Next page, 2016. "Reminder about confidentiality.
21 If you have any concerns regarding confidentiality, please
22 speak with Marijuana Enforcement Division Program Manager
23 Steve Gilbert immediately."

24 And on the next page it continues. "Contact Steve
25 Gilbert immediately if someone from industry approaches you,

1 if you suspect some has been approached in this room regarding
2 this work, if something suspicious happens, if you reveal
3 inadvertently reveal your work to someone," looks like there's
4 a word there twice, "or if you have questions regarding
5 confidentiality." Are you aware of any instances where
6 someone reported to Steve Gilbert a time where someone from
7 industry approached them?

8 A No.

9 Q And then lastly, 2018, doesn't say confidentiality,
10 but talks about the room contents and talks about access to
11 that room, including "No materials are to leave this room."
12 Suffice to say these last nine pages confidentiality is
13 something that the Department enforced and was concerned
14 about?

15 A We went over this on a daily basis with them, yes.

16 Q And I won't go through all of those pages on each of
17 the training materials that we have here, but it appears to me
18 that confidentiality is address every time in those training
19 materials. Is that right?

20 A Yes, sir.

21 THE COURT: Before you leave that site, who was in
22 Office C?

23 THE WITNESS: Office C was where the administrative
24 assistants were, I believe.

25 THE COURT: The administrative assistants were in

1 the supervisor's office?

2 THE WITNESS: Oh. No. That would have been where
3 -- so A is where non-identified was, B is where administrative
4 assistants were, and C is where the identified were, I
5 believe. I don't recall. A with windows.

6 BY MR. KOCH:

7 Q Steve Gilbert may be a better guy to ask?

8 A I should remember this. I'm sorry. Steve may
9 recall.

10 Q Okay.

11 A I can -- I can lay it out or draw a picture of it.

12 Q Becomes important if people talk about --

13 THE COURT: No. It's okay. Just keep going.

14 BY MR. KOCH:

15 Q All right. Let's go to 2140 in that same exhibit.
16 It's titled "Agent cards." What do you understand an agent
17 card to be?

18 A Authorization to work in the industry and/or be an
19 owner, officer, or board member of an establishment.

20 Q That slide says, "All owners, officers, board
21 members, employees, and volunteers for a marijuana
22 establishment must register with the Division for an agent
23 card. Must be 21 years of age or older."

24 The Judge raised a question earlier about
25 corporations being owners. Are you aware of any corporation

1 that held an agent card for the corporation?

2 A I am not.

3 Q Okay. And the 21 years of age or older, that apply
4 to corporations [unintelligible], do you know?

5 A No.

6 Q All right. We talked about the information that the
7 Department may or may not have regarding owners as listed.
8 And I'd like you to turn to what's been Proposed Exhibit 5023.

9 MR. KOCH: I don't know if you've had a chance to
10 take a look at 5023. It's just an owner list from the
11 Department's Website.

12 THE COURT: Any objection to 5023?

13 MR. GENTILE: Your Honor, let's look at it first.
14 We're looking at it right now, Judge.

15 MR. KEMP: Your Honor, I think that's actually been
16 admitted as one of our exhibits.

17 MR. KOCH: It may be.

18 MR. KEMP: But I'd point out that that's the May 1st
19 version, so I don't -- just if you intend to ask --

20 MR. KOCH: Sure. Sounds like there's no objection.
21 I will move to admit 5023.

22 THE COURT: That'll be admitted.

23 (Defendants' Exhibit 5023 admitted)

24 BY MR. KOCH:

25 Q Mr. Plaskon, can you please look at Exhibit 5023.

1 It should be --

2 THE CLERK: At the very bottom of the cart.

3 MR. KOCH: May I approach?

4 THE WITNESS: I can see it on the screen here, if
5 that's helpful.

6 BY MR. KOCH:

7 Q All right. Can you tell us what 5023 is.

8 A Licensed entity owner, officers, board members as of
9 May 1st, 2019.

10 Q Is this a record that the Department of Taxation
11 keeps?

12 A Yes.

13 Q And this is for each licensed marijuana entity,
14 including production, cultivation, retail, et cetera?

15 A Correct.

16 Q Okay. And the list of names there under ID, do you
17 know what that means, the left column?

18 A This is their license ID.

19 Q Okay. I would like you to turn to -- my client is
20 listed here, Nevada Organic Remedies. I guess this doesn't
21 have page numbers on it. We're going to go alphabetically.
22 It's probably about two thirds of the way in under Nevada
23 Organic Remedies. Let me know when you get there, please.

24 A Yes.

25 Q Okay. And there's a list goes on for a little while

1 on Nevada Organic Remedies for distributor [inaudible],
2 cultivation, dispensary. If you'll turn to the fourth page,
3 ID Number RD215 right in the middle of the page. Do you see
4 that?

5 A Yes, sir.

6 Q All right. Going to RD215. So in RD215 the name --
7 first name, Nevada Organic Remedies LLC. And in this process
8 my understanding of the key the Department has provided, 215
9 is associated with Nevada Organic Remedies in lists that I've
10 seen and some of the information we've looked at. That's a
11 number assigned to each entity; is that right?

12 A Yes.

13 Q If we look here, RD215 goes on for about 22 rows
14 here. Can you tell us what is depicted there for Nevada
15 Organic Remedies under RD215, in particular where it says,
16 last name, first name, and then continuing from there.

17 A The last names of the owners, officers, and board
18 members.

19 Q All right. So here we begin with Patrick Byrne.
20 The second one there is GGB Nevada LLC is listed; correct?

21 A Correct.

22 Q All right. And that's listed as an owner; is that
23 right?

24 A Correct.

25 Q Goes on to have additional individuals listed as

1 owner, officer, or board member all the way to the second-to-
2 the-last row at the bottom. That's all information that's
3 been submitted to the Department the Department has in its
4 records; correct?

5 A Correct.

6 Q And so if Nevada Organic Remedies submitted
7 information regarding ownership, the Department would be able
8 to check it against its records as far as the owners listed
9 here; is that right?

10 A That's correct.

11 Q If we look at the two columns next to that, titled
12 "Affiliated Entity 1" and "Affiliated Entity 2." Do you see
13 that on the top?

14 A Yes, sir.

15 Q And underneath each of those for Nevada Organic
16 Remedies Number 1 is GGB Nevada LLC, Number 2 is Xanthic
17 Biopharma, Inc. Do you know what that affiliated entity
18 designation shows?

19 A I don't.

20 Q On the top, if we look at the title of that
21 document, after "May 1st, 2019," it states, "An affiliated
22 entity may be a parent company, subsidiary, an organization
23 that controls another entity, is controlled by another entity,
24 or under common control along SID [phonetic]," and looks like
25 it cuts off there. So the affiliated entity could include a

1 parent company; is that right?

2 A Correct.

3 Q Also a subsidiary?

4 A Yes.

5 Q And do operators provide if they have a parent
6 company the name of that parent company the name of that
7 parent company to be listed here?

8 A Yes.

9 Q The Department doesn't go out and search that out
10 itself and perform an independent investigation, does it?

11 A No.

12 Q And that would be the case for all of the entities
13 that are listed here. Let's take one more example. If we go
14 to MM Development Company a few pages before that, and we're
15 going to look at RD006, which is on the -- looks like the last
16 entry for MM Development Company. Top three lines on that
17 page, do you see that?

18 A Yes.

19 Q RD006. All right. And there for MM Development
20 Company it appears that there are three individuals listed
21 there as owners, officers, or board members; is that right?

22 A Correct.

23 Q If MM Development Company had additional owners,
24 officers, or board members, would you expect them to be
25 depicted here?

1 A Yes.

2 Q And if MM Development Company had additional
3 officers, directors, or board members that are not listed
4 here, would you have any concern about that?

5 A Really have to talk to the program officer about
6 that.

7 Q Okay. And as an affiliated entity there, Planet 13
8 Holdings, Inc. Do you know if MM Development is owned by a
9 parent company?

10 A So affiliated entity over MM Development
11 Corporation?

12 Q Right.

13 A So, according to this chart, Planet 13 would be an
14 affiliated entity for MM Development.

15 Q All right. You had some discussion yesterday about
16 the fact that some public companies operate marijuana
17 establishments in the state of Nevada; is that right?

18 A Uh-huh.

19 Q And that's a known thing, public companies do own
20 marijuana establishments?

21 A Yes.

22 Q All right. And public companies, typically public
23 in Canada, not in the United States?

24 A No. There are U.S. companies, as well.

25 Q Okay. There's no prohibition on a public company

1 being an owner or operator of a marijuana establishment in the
2 state of Nevada, are there?

3 A I don't know.

4 Q Okay. And you had some discussion with respect to
5 whether shareholders in a public company would need to be
6 listed in the application that was submitted in 2018. You
7 said maybe they should be. Do you know for certain if they
8 should be or not?

9 A No.

10 Q The information Mr. Parker showed you and the
11 regulation in the NAC with respect to the 5 percent threshold,
12 you're not familiar with that regulation?

13 A No.

14 Q So your statement yesterday regarding whether
15 shareholders could or should be listed was not based on the
16 regulations based on your supposition yesterday?

17 A Yes.

18 Q Do you know if every shareholder of a public company
19 that owns or operates a marijuana establishment needs and
20 agent card?

21 A No, I don't know.

22 Q I looked through the regulations, NAC 453D, which
23 regulates or governs recreational marijuana, state of Nevada.
24 That's the right chapter; right?

25 A I don't know. Not sure.

1 Q I saw the word "agent" -- or did a search for "agent
2 registration card." It comes up 122 times in that chapter.
3 Is an agent registration card an important thing to the
4 Department?

5 A Yes.

6 Q And if an applicant were not forthcoming and
7 complete on submitting agent cards for each of their owners,
8 officers, or board members, would that be a concern to the
9 Department in your experience?

10 A Yes.

11 Q Exhibit 2016, State's exhibits. Do you have -- 2016
12 should be Volume 2 of the Department of Taxation.

13 (Pause in the proceedings)

14 BY MR. KOCH:

15 Q Exhibit 2016 we've identified previously is --
16 appears to be the scoring tool for the organizational
17 structure the Department used; is that right?

18 A Yes.

19 Q Okay. There were a lot of questions about diversity
20 and different aspects of the organizational structure. If you
21 could turn to Bates Number 2683, which should be about the
22 fifth or sixth page of that document.

23 A Yes, sir.

24 Q And on that page there's a description about the
25 diversity demographic information that's listed there. You

1 see that?

2 A Yes, sir.

3 Q I want to ask you about the last line, because I
4 don't know that we talked about that, after the Anglo/European
5 American it says, "Must provide proof. May check in Portal."
6 Do you know what that refers to?

7 A The Portal refers to the agent card system that we
8 use.

9 Q It's the Portal a computer system?

10 A It is.

11 Q And does the Portal keep track of the agent cards
12 that have been submitted and registered with the Department?

13 A Yes, sir.

14 Q Do you know if beyond the check with the agent cards
15 was there other investigation or proof the Department
16 demanded. Did it do DNA tests, did it do something -- birth
17 certificates, anything like that?

18 A No, sir.

19 Q Okay. So there's some element of trust based upon
20 the information that was provided to the Department with
21 respect to ethnicity and race?

22 A Yes, sir.

23 Q Okay. I'd like to turn to Proposed Exhibit 5021.

24 MR. KOCH: It's the Planet 13 corporate
25 presentation.

1 THE COURT: Anybody have any objection to 5021?

2 MR. KEMP: Oh. Is this from the 51 documents?

3 MR. KOCH: It's your April 2019 corporate
4 presentation just from your Website.

5 MR. KEMP: I don't object, provided you give me the
6 same leeway when I start using yours up there.

7 MR. KOCH: I think there's no objection.

8 MR. KEMP: No, Your Honor. What I said to Counsel
9 is if we're not going to have custodians of records
10 authenticated on his side, I won't mind not having --

11 THE COURT: So you want the same courtesy that
12 you're extending to him.

13 MR. KEMP: I want the same courtesy. So that's what
14 I said to him exactly. I will not -- I will not object to
15 this on foundation basis --

16 THE COURT: So are you going to extend him the same
17 courtesy?

18 MR. KEMP: -- just as long as I get the same
19 courtesy.

20 MR. KOCH: And this is on their Website. You can
21 right on and check it out. But I think we'll --

22 MR. KEMP: [Inaudible] .

23 MR. KOCH: -- fine to proceed.

24 THE COURT: Understanding counsel's agreed to extend
25 the same courtesies to each other to avoid called custodians

1 of records to identify the documents, it will be admitted.

2 (Defendants' Exhibit 5021 admitted)

3 BY MR. KOCH:

4 Q All right. I assume, Mr. Plaskon, you have not seen
5 this document before today. You have the binder in front of
6 you, actually.

7 A Which one?

8 Q It's defendant intervenors. It should be Volume 2.
9 And it's 5021.

10 A I am looking at it. I have not seen it before.

11 Q All right. And, you know, the only reason I'm
12 showing you this, there was a lot of questions yesterday
13 where, you know, put up Minnie Mouse and Jessica Rabbit and
14 things, and I thought we'd just kind of look at what the
15 actual public information that's out there is.

16 This is a corporate presentation from Planet 13. If
17 you'd turn to page 16 in that document, which says,
18 "Management and Board of Directors." Are you there?

19 A Yes, sir.

20 Q Okay. So there's four individuals shown there.
21 And then on the next page, page 17, there's four additional
22 individuals. And those are the only eight that are included
23 in this presentation. Represent that each of these
24 individuals were listed in the application that MM Development
25 Company submitted to the Department, each of them listed as a

1 white, Caucasian male. If this were the full list of
2 management, directors, and owners that were submitted to the
3 Department for purposes of diversity, do you know how many
4 points those individuals would have received on the diversity
5 scale?

6 A Zero.

7 Q And go to 5022. It's proposed again. Same thing
8 [inaudible] from the Website.

9 THE COURT: Mr. Kemp, given the understanding?

10 MR. KEMP: Given the understanding, Your Honor.

11 THE COURT: Then it'll be admitted.

12 (Defendants' Exhibit 5022 admitted)

13 BY MR. KOCH:

14 Q Exhibit 5022 is a printout of Planet 13 Holdings
15 Website titled "The Team." This Website shows a few more
16 pictures with some individuals, and, unlike the cartoons,
17 these are real people, I believe. This has 11 people this
18 time. All of these individuals I believe, with the exception
19 of Mr. Farris, and correct me if I'm wrong, were listed on the
20 application that MM submitted to the Department, listed
21 genders, race, ethnicity. Mr. Vargas on the top right was
22 listed as Hispanic. I believe all the rest were listed as
23 white males.

24 So take out Mr. Farris, and if we have Mr. Vargas as
25 qualifying under diversity in the minority category, one out

1 of 10 board members, owners, or directors, do you know how
2 many points that would be under the scoring tool?

3 A I don't know how many points. It's 10 percent;
4 right?

5 Q 10 percent. Correct. How many points would that
6 be?

7 A I don't recall not looking at the tool.

8 Q The scoring tool shows zero to 10 percent is
9 2 points. Does that refresh your recollection?

10 A It sounds right.

11 Q Okay. There were additional individuals that were
12 submitted to the Department as part of MM Development's list
13 of board members, owners, or directors, including two women,
14 one of whom is an African-American woman. Would the
15 Department have any concern about a list of board members,
16 officers, or directors that was different than what the
17 company may be listing on its Website?

18 A No. We did not seek additional information.

19 Q Right. So the Department didn't go out and do its
20 own investigation, search for Websites, do interviews, things
21 like that; is that right?

22 A Right.

23 Q It would trust what was submitted to it; is that
24 right?

25 A Yes.

1 Q And to the extent that that information was correct
2 also put on agent cards the Department would have no reason to
3 distrust that information; is that right?

4 A Correct.

5 Q And the Department was not investigating looking to
6 prove applicants wrong, was it?

7 A Correct.

8 Q But if it were aware of an inaccurate statement, it
9 would do its best to either correct that, seek additional
10 information, or clarify that mistake; is that right?

11 A Yes.

12 Q What about if one of these individuals listed here
13 were married to a minority? Would that count for diversity
14 purposes?

15 A I don't believe so.

16 Q What about if one of the individuals were a military
17 veteran? Would that count?

18 A No.

19 Q What if the veteran were disabled? Would that
20 count?

21 A No.

22 Q If you have the scoring tool still open, 2016 -- do
23 you have that exhibit? It was State Volume 2.

24 A Yes, sir.

25 Q And we looked at that scoring tool for

1 organizational structure. And just turn right back to the
2 diversity section on that sixth or seventh page. And there
3 were some questions yesterday about the phrasing of what was
4 stated there. It said, "Points awarded for percent of
5 principals which are non-Caucasian, female, and non-
6 Anglo/European American." And Mr. Kemp argued or asked you
7 the question about whether an applicant or principal needed to
8 be non-Caucasian, female, and non-Anglo/European American in
9 order to qualify under this diversity category. My
10 understanding is they didn't need to check all three of those
11 boxes to be able to receive consideration for diversity. Is
12 that right?

13 A No.

14 Q And although we may come back later and read these
15 words and make arguments about the "and" being a exclusive or
16 all-inclusive category, did any of the evaluators come to you
17 or anybody else you're aware of and say, hey, I've got an
18 applicant here with an African-American male, but he's not
19 female and non-Anglo/European Caucasian [sic]. So does he
20 count, any questions like that?

21 A We did bring that up in training and we talked about
22 that during training and made it clear that it was any one of
23 those three categories.

24 Q Okay. So based upon what you said and you wrote
25 down yesterday, it was pretty, the standards that were there,

1 did you believe based upon your observation of the training
2 that's provided that in fact the application of the diversity
3 percentages was pretty clear?

4 A Our procedures were pretty clear.

5 Q I think that's what you wrote. Good. Better than I
6 recited it.

7 We looked at a lot of information here, and I think
8 you said that at the end of the day you believe the Department
9 completed the process successfully. Is that your testimony?

10 A Yes, sir.

11 Q As you sit here today after you've had all these
12 questions and all the interrogations do you still believe that
13 the Department did the process successfully?

14 A Yes, sir.

15 Q Did you believe that there was any impropriety with
16 respect to any applicants attempting to make communication
17 with the Department to sway the proceedings?

18 A They did not attempt to make communication to sway
19 the proceedings.

20 Q And the regulation and statute calls for an
21 impartial process. Did you believe that the process was in
22 fact impartial?

23 A I do believe that.

24 Q And did you observe or note any bias or any undue
25 influences that were exerted upon or perceived by the

1 evaluators in your observation?

2 A In my observation no.

3 MR. KOCH: No further questions.

4 THE COURT: Any of the other defendants in
5 intervention?

6 Ms. Shell.

7 MS. SHELL: I have three questions tops.

8 THE COURT: If you can keep your voice up, you might
9 be able to stay there.

10 MS. SHELL: Your Honor, I've never had a problem
11 keeping my voice up.

12 THE COURT: Jill will tell you.

13 CROSS-EXAMINATION

14 BY MS. SHELL:

15 Q Good afternoon, Mr. Plaskon. I just have a couple
16 questions to ask you.

17 Do you remember earlier today, and it was today, Mr.
18 Gentile asked you some questions about some text messages that
19 were retrieved from your State-issued phone?

20 A Yes, sir -- or ma'am. Sorry.

21 Q It's all right. I'll answer to both.

22 Could you pull Exhibit 108, please. And it's on
23 page 40. And then Item Number 540.

24 So I'm having -- if you can look at the screen.

25 THE COURT: It's on the screen, sir.

1 BY MS. SHELL:
2 Q It's on the screen. You could just look at it. I
3 think it's easier that way.
4 A Okay.
5 Q Do you see the entry on Exhibit 108 that's been
6 highlighted?
7 A Yes.
8 Q Do you remember -- if you could just look at the
9 right-hand column that has the text message in it. Do you
10 remember looking at that earlier today?
11 A Yes.
12 Q And can you just for the Court and everyone else
13 here just read the text message in its entirety.
14 A "Anyone doing a dispensary app in Pershing County
15 Steve someone should apply an just open it up the week of
16 Burning Man. LOL."
17 Q Okay. I was going to ask you -- you said at the end
18 LOL, and LOL stands for laugh out loud?
19 A Yes. I used to think that it meant lots of love,
20 but someone corrected me. And now I use it all the time.
21 Q That is a -- I think that may be an age thing,
22 because apparently 50-something -- anyway, so laugh out --
23 UNIDENTIFIED SPEAKER: He's not 50.
24 MS. SHELL: He's not 50.
25 //

1 BY MS. SHELL:

2 Q Okay. So laugh out loud is what LOL means?

3 A Yes.

4 Q So was that text message meant to be a joke?

5 A Yes.

6 MS. SHELL: No further questions, Your Honor.

7 THE COURT: Anyone else on the defendants in
8 intervention team?

9 Then I'm going back to the plaintiffs' side.

10 MR. KEMP: Yes, Your Honor.

11 THE COURT: Thank you, Mr. Kemp.

12 THE WITNESS: May I use the restroom?

13 THE COURT: Yes. We're going to take a short break.
14 The witness has requested a break, which means this is a
15 requested break.

16 (Court recessed at 3:57 p.m., until 4:02 p.m.)

17 MR. KEMP: Mr. Kemp, how long do you think you've
18 got on redirect?

19 MR. KEMP: Ten to 15, Your Honor.

20 THE COURT: Lovely. Thank you.

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

23 Mr. Kemp, you're up.

24 MR. KEMP: Your Honor, I talked to Mr. Koch about
25 this because I wanted to ask a question about the owners

1 they've listed in the application for Nevada Organic Remedies,
2 and this has been designated as attorneys' eyes only.

3 THE COURT: If it's admitted, it's not attorney eyes
4 only, it's a public document.

5 MR. KEMP: No, it's not admitted. No, Your Honor.
6 He didn't use this document, he used a different document,
7 which I'll get into. And so for purposes of the questioning
8 today -- I think this may change later on, but for purposes of
9 the questions today what we've agreed is that I can show the
10 witness and have the witness review it and identify it by the
11 DOT number --

12 THE COURT: Sure.

13 MR. KEMP: -- and then the witness can answer the
14 question.

15 THE COURT: Sure. Don't give me a copy.

16 MR. KEMP: Yeah. The other alternative --

17 MR. KOCH: I believe the Court already has a copy.
18 That's what [unintelligible] we talked about this morning.

19 THE COURT: Then you'll need to take it out of the
20 books.

21 MR. KOCH: All right.

22 MR. KEMP: Yeah.

23 MR. KOCH: It's not in the books. It was part of
24 the motion to compel, I think.

25 MR. KEMP: Right. Your Honor, the other alternative

1 would be to seal it, and I think for now we'd rather --

2 THE COURT: I'm not sealing it.

3 MR. KEMP: Okay.

4 THE COURT: I'm in a public hearing with the public
5 sitting in the courtroom. I'm not sealing it.

6 MR. KEMP: All right, Your Honor.

7 THE COURT: Okay.

8 MR. KEMP: In any event, that's the reason we just
9 might --

10 THE COURT: You are welcome to show the witness
11 anything, including a cocktail napkin, to refresh his
12 recollection.

13 MR. KEMP: Thank you, Your Honor. I think that is
14 the rule.

15 THE COURT: Yeah. Lipstick on a cocktail napkin.

16 REDIRECT EXAMINATION

17 BY MR. KEMP:

18 Q Sir, first of all, the document that you went over
19 with Mr. Koch, the May listing of officers and directors by
20 the State, remember that document?

21 A Owners, officers, and board members, yes.

22 Q Right. Would I be correct that that has only
23 recently been added to the State's Website?

24 A Yes.

25 Q In fact, it's only been out in the last two weeks.

1 A I don't recall the exact date, but two weeks sounds
2 a little thin.

3 Q Sometime in May. Sometime in May?

4 A Yes.

5 Q Okay.

6 THE COURT: Upon the effective of SB32 being signed?

7 THE WITNESS: That's correct.

8 THE COURT: Yes.

9 BY MR. KEMP:

10 Q And this is the State's list based upon all the
11 information that it's been provided; correct?

12 A Correct.

13 Q Including changes of ownership; right?

14 A Yes.

15 Q Okay. This is not a reproduction of what the
16 applicants actually put on their applications; correct?

17 A I didn't produce the document, so I'm not -- I don't
18 know. I can't answer that.

19 Q So what Mr. Koch showed you is not necessarily what
20 Nevada Organic Remedies put on its application for its owners;
21 correct?

22 A No.

23 Q Okay. I'd like to hand you a document. And this is
24 the document we're just going to reference by the numbers,
25 which is the application that Nevada Organic Remedies filed.

1 And specifically if you would look at pages 22 -- there's two
2 pages 22, but the Bates Stamp is DOTNVORGANIC00012 and 0013.
3 And the next page you'll see Mr. Jolley's signature, okay.

4 Would you tell me who Nevada Organic Remedies
5 actually -- who Nevada Organic Remedies actually listed as
6 their owner.

7 A Patrick Byrne. You want me to read these?

8 Q Yes, please.

9 A Patrick Byrne is the owner; Steven Byrne, owner;
10 Andrew Jolley, owner; Darren Peterson, owner; Lisle Siss -- I
11 am sorry if I'm pronouncing that incorrectly. And that
12 appears to be the end of Attachment A.

13 Q So four men and one woman -- one woman; correct?

14 A Yes, sir.

15 Q Okay. And if you have four men and one woman, how
16 would that rate in terms of diversity points? Do you need --

17 A Yeah. I've got to do the calculation.

18 MR. KEMP: Okay. Can we pop that back up, Joe.

19 THE CLERK: Which exhibit number?

20 THE COURT: It's not an exhibit number. It's being
21 used to refresh the witness's recollection only and not for
22 the Court's deliberative process.

23 Does the score sheet help you there, sir?

24 THE WITNESS: I'll have to use the Plaskon method
25 here quickly.

1 THE COURT: Four men, one woman.

2 THE WITNESS: So five total?

3 BY MR. KEMP:

4 Q Five.

5 A I believe that would come out to 20 percent.

6 Q 20 percent is five?

7 A One out of five is 20 percent diversity.

8 Q And how many points is that?

9 A Zero.

10 Q Zero points.

11 A Yes.

12 Q Okay. And can you explain to me why Organic
13 Remedies got 8 diversity points?

14 A Yes. Because we considered the owners, officers,
15 and board members and their diversity.

16 Q In their what?

17 A And their diversity.

18 Q Oh. You think some of these were diverse?

19 A You didn't ask me to --

20 Q It's okay. But these were the five that were rated;
21 is that correct?

22 A I don't know. I haven't looked at their
23 application.

24 Q Given that these are the only five people listed as
25 owners on the application, these are the ones that should have

1 been rated.

2 MR. KOCH: Objection. Argumentative. Misstates his
3 testimony.

4 THE COURT: Overruled. You can answer and explain
5 if you need to.

6 THE WITNESS: It's incorrect. Owners, officers, and
7 board members are considered, not just owners.

8 BY MR. KEMP:

9 Q Okay. Fair. Fair. But these people are the only
10 ones listed as owners on the application; right?

11 A Yes.

12 Q Now, if these people weren't actually the owners of
13 Nevada Organic Remedies, should they have been listed as
14 owners?

15 A They're proposed owners, officers, and board
16 members.

17 Q Oh. These are proposed owners; that's what you --

18 A I believe that's what it says here, isn't it? No.

19 Q And why don't we just cut to it.

20 A Okay.

21 MR. KEMP: Can I have 92, please, which is an
22 admitted exhibit, Your Honor. And then 93. Could we focus it
23 on [inaudible]. Let's go to 93. It's a little clearer.

24 BY MR. KEMP:

25 Q Sir, this is a document that was put out by a

1 company known as Xanthic. And in this document -- and Joe's
2 going to find it for you. In this document it states that
3 Xanthic as of November -- excuse me, September 8th, I believe,
4 has purchased all of the membership interest of Nevada Organic
5 Remedies, okay. That's the intellectual property agreement.
6 There's another part that says the effective date of purchase.

7 Assuming that to be true, that Xanthic, a publicly
8 traded company, purchased all of the interest of Nevada
9 Organic Remedies prior to the time period that it filed its
10 application, who should have been listed as the owner?

11 A If a transfer of interest had been approved by the
12 Department, then the ownership on that transfer of interest
13 should have been on the application.

14 Q Do you see that stated there, the NOR, Nevada
15 Organic Remedies acquisition was completed on September 4th,
16 2018? See that statement?

17 A Yes.

18 Q So assuming that to be true, that it was completed,
19 assuming that to be true, would I be correct that Nevada
20 Organic Remedies should not have listed Mr. Byrne, Mr. Byrne,
21 Mr. Jolley, Mr. Peterson, and this other person as owners on
22 the application it filed?

23 A No.

24 Q Even if they -- even if the purchase has been
25 completed, they should still list them as owners?

1 A It's possible that those people that you mentioned
2 there are also owners of the company in the transfer.

3 Q Well, I don't see GBR -- or, excuse me, GGB of
4 Nevada listed as an owner on the document I gave you for
5 review, do I?

6 A I didn't see that, no.

7 Q And I don't see Xanthic listed as an owner. Do you?

8 A No.

9 Q So Nevada Organic Remedies did not list the true
10 owners. It listed these five individuals who, according to
11 this document that was filed with Canadian Securities
12 Exchange, did not have an interest.

13 MR. KOCH: Objection. Lacks foundation, personal
14 knowledge.

15 THE COURT: Overruled. You can answer.

16 THE WITNESS: The program officer for the transfers
17 of interest would have to verify that a purchase had actually
18 occurred and been approved by the Department.

19 BY MR. KEMP:

20 Q And the purchase did occur --

21 A Purchase cannot happen --

22 Q You don't think the purchase happened before --

23 A It cannot happen without Department approval.

24 Q Okay. Now that you've seen that the five people
25 that they listed as owners were not in fact owners, would you

1 agree with me that the application was not properly completed?

2 A No, I wouldn't agree with you.

3 Q Okay. You still think it was properly completed?

4 A We based our evaluation on the application and the
5 information that was provided in the application.

6 Q Okay. And in addition to listing people who were
7 not really owners, the five individuals I've already talked
8 about, they did not list either the owners of GGB Nevada or
9 Xanthic as owners, did they?

10 A Those were not listed on the Attachment A that you
11 pointed me to.

12 Q And as we've seen from the application before, all
13 owners and the percentage of ownership shall be listed;
14 correct? That's on page 7.

15 THE COURT: And that's back at Exhibit 5?

16 MR. KEMP: Yes.

17 THE WITNESS: "For each owner, officer, and board
18 member listed below please fill out a corresponding
19 Establishment Principal Officers and Board Members Information
20 Form."

21 BY MR. KEMP:

22 Q Okay. And it says "all" above that should be
23 listed; correct? It uses the word "all"?

24 A I don't see the word "all" in there. It says "For
25 each."

1 MR. KEMP: Joe, could you pop that back up, please.

2 THE WITNESS: Oh. You're looking at a different
3 section than I am. Sorry.

4 BY MR. KEMP:

5 Q I'm looking at the section that says "all"; right?

6 A I can't see it on the screen. It's not big enough.

7 Q Okay. Would you agree with me that assuming that
8 Xanthic on September 4th purchased Nevada Organic Remedies,
9 and you've already said that the owners did not include GBR
10 Nevada or Xanthic, would you agree with me that Nevada Organic
11 Remedies did not comply with the directive to list all of
12 their owners?

13 A I would not agree with you.

14 Q You wouldn't? And why not?

15 A We evaluated the application based on the
16 information that was provided.

17 Q So even if the information is incomplete or
18 inaccurate, doesn't matter to the DOT?

19 A It does matter to the DOT.

20 Q Then what's the remedy now that I've shown you who
21 the actual owners were? What's the remedy?

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

24 THE COURT: Overruled.

25 THE WITNESS: The -- I am have not verified that the

1 information that you provided has actually occurred, that that
2 sale has been approved by the Department.

3 BY MR. KEMP:

4 Q And let's assume it has been approved.

5 A Assume that that transfer --

6 Q Let's assume it has been approved.

7 A You would have to talk to the program officer about
8 the remedy for that situation.

9 Q They filed a statement that was inaccurate. You've
10 already told me that it was filed under penalty of perjury;
11 right? Right?

12 A Yes.

13 Q Shouldn't the application just be stricken?

14 A That would be a question for Steve Gilbert or Jorge
15 Pupo.

16 Q And you know that Nevada Organic Remedies won four
17 conditional licenses, don't you?

18 A No.

19 Q You do know they were a winner of conditional
20 licenses?

21 A I would need to look at the documents.

22 Q Mr. Koch's sitting on this side. I think you can
23 assume he was the winner.

24 MR. KEMP: Okay. Let's get my next exhibit, 94.

25 //

1 BY MR. KEMP:

2 Q This is a financial statement from Nevada Organic
3 Remedies, okay.

4 MR. KEMP: Joe, can you highlight the part of the
5 purchase by Xanthic, please. It's on the next page.

6 Sorry, Your Honor. Joe's pinch hitting for Shane.

7 THE COURT: It's okay. It's fine.

8 BY MR. KEMP:

9 Q Tell you what. Let's jump, and we'll come back,
10 okay.

11 Mr. Koch asked you a number of questions about MM
12 Development; correct?

13 A Correct.

14 Q But he did not show you the MM Development
15 application that was actually filed, did he?

16 A I don't think so.

17 Q Okay. And just assume for me that the application
18 that was actually filed listed as the owners 12 persons,
19 including Mr. Vargas -- excuse me. Assume for me that MM
20 Development has identified its owner as Planet 13 Holdings
21 Company as the owner, that that has been identified on the
22 application. That's what you're supposed to do; right?

23 A Can you repeat the question for me.

24 Q If your owner is a corporation or an LLC, you're
25 supposed to say that on the application if you're referencing

1 the owner?

2 A Owners, officers, and board members needed to be
3 listed on the application.

4 Q Including public corporations, corporations, or
5 LLCs; right?

6 A I think you'd need to have to -- you'd have to talk
7 to Steve Gilbert or Jorge Pupo for that.

8 MR. KEMP: Okay. All right. Are we ready, Nate?
9 Okay. Pop it up, will you please.

10 BY MR. KEMP:

11 Q And again this is admitted Exhibit 94. This is
12 Nevada Organic Remedies' financial sheet. Can you read to
13 yourself what they say on the bottom.

14 A Yes, I can.

15 Q What does that say?

16 A "In September of 2018 the members of the company
17 sold 100 percent of the membership interest in GGB Nevada LLC
18 in --"

19 THE COURT: To GGB Nevada.

20 THE WITNESS: "...to be GGB Nevada LLC in an arm's-
21 length arrangement. The company has yet to assess the impact
22 of this transaction on its consolidated financial statements."

23 BY MR. KEMP:

24 Q And GGB Nevada was the one that technically Xanthic
25 said it bought; correct? Do you recall the previous one?

1 A Yes.

2 Q Okay. So basically we have Xanthic and NOR telling
3 the world that these five individuals are no longer owners and
4 that Xanthic is the owner, and yet we have Nevada Organic
5 Remedies telling the Department of Taxation in its application
6 that these five individuals are the owners. That seem right
7 to you?

8 A No.

9 Q Something went wrong here? I'm not saying it's on
10 the DOT's part, but someone did something wrong.

11 MR. KOCH: Objection. Argumentative.

12 THE COURT: Overruled.

13 MR. KOCH: Also lacks personal knowledge.

14 THE COURT: Overruled.

15 THE WITNESS: I don't know whether that transfer has
16 actually occurred.

17 BY MR. KEMP:

18 Q If the transfer actually occurred prior to the time
19 you issued the conditional license and the DOT wasn't told
20 about it, someone did something wrong.

21 A The license would likely not be issued. The final
22 license.

23 Q So if Nevada Organic Remedies has been give four
24 conditional license under the facts as I've indicated, that
25 Xanthic and/or GBR are the true owners, Nevada Organic

1 Remedies should not be given the conditional licenses; is that
2 correct?

3 MR. KOCH: Objection. Argumentative. Lacks
4 foundation.

5 THE COURT: Overruled. You can answer.

6 THE WITNESS: No, I don't have enough information to
7 be able to say yes or no, no.

8 BY MR. KEMP:

9 Q What information do you need other than the public
10 filing by Xanthic that the transaction was completed on
11 September 14 and the statement by Nevada Organic Remedies that
12 the transaction was done in September 2018? What more do you
13 need?

14 A A company cannot own the license till the Department
15 has issued that license to the company. They cannot purchase
16 it, they cannot hold it.

17 Q Okay. So it's a conditional license.

18 A So the information that I would need is to be able
19 to talk to the program officer that handles transfers of
20 interest.

21 Q And would your recommendation be -- given that the
22 application did not contain the accurate information, would
23 your recommendation be that this license not be awarded, the
24 conditional license?

25 MR. KOCH: Objection. Beyond the scope of this

1 witness's knowledge.

2 THE COURT: Overruled.

3 THE WITNESS: No. I would not be the one to make
4 that recommendation.

5 BY MR. KEMP:

6 Q Who is?

7 A Program Officers Steve Gilbert, Jorge Pupo would
8 consider that information.

9 Q Okay. You would agree that -- that saying that you
10 are the owners, five people, and not say who the real owners
11 are, you would agree that's misleading information?

12 MR. KOCH: Mischaracterizes testimony. Foundation.

13 THE COURT: Overruled.

14 THE WITNESS: That would be a question for Jorge
15 Pupo, Steve Gilbert, or the program officer.

16 BY MR. KEMP:

17 Q Okay. Now, would you take a look at the date Mr.
18 Jolley signed that application for license.

19 A Which document am I looking at?

20 Q It's the third one in from the ownership list. Has
21 Mr. Jolley's signature. See the date there?

22 A 9/4/18.

23 Q Okay. And I think you've already told us that you
24 only had I think it was three applications by September 10th,
25 was it? According to your text, you only had three

1 applications by --

2 A The 17th.

3 Q 17th? Okay. Great. And the period for
4 applications opened up on September 10th; right?

5 A Correct.

6 Q According to Xanthic, the transaction was completed
7 before that time; right?

8 A Yes.

9 Q Okay. Was the application to be correct as of the
10 date it was filed?

11 A The program officer for transfers of interest would
12 determine that, as well as Steve Gilbert and Jorge Pupo.

13 Q Okay. In other words, if the information is false
14 as of the date that it's filed, you would consider that to be
15 a violation of the requirements that were set forth in the
16 application; is that true?

17 A Steve Gilbert and Jorge Pupo would have to make that
18 determination.

19 MR. KEMP: Okay. All right. No further questions.

20 THE COURT: Any other plaintiffs have any additional
21 questions for this witness?

22 Mr. Parker.

23 MR. PARKER: I have two, Your Honor. Maybe not two
24 questions, but two lines of questions. It shouldn't be much.

25 //

REDIRECT EXAMINATION

BY MR. PARKER:

Q I wanted to go back to the training that I can't recall if Steve or Mr. Pope asked you about -- Koch asked you about. But as regarding the training that you were giving or the additional training you were giving during the evaluation process. Remember that line of questioning? I think there were slides put up for you to look at, talking about questions and everything else.

A Yes.

Q All right. If you considered those questions and then reflect upon the question I asked you regarding the part of the application dealing with the adequacy of the building -- do you remember that?

A Yes.

Q And you indicated that to your knowledge there was only evaluator that had any experience in terms of construction or development. Do you remember that? That you can recall.

A Yes.

Q All right. Was there any logic or reason in terms of how that person was utilized to judge or evaluate applications relative to the building size or adequacy?

A The scoring tool I believe was their guide.

Q So, for example, let's say that you've got 462

1 applications and two of them actually involve buildings
2 already constructed and in use. First there's 260 that were
3 plans, proposed plans. Would the person with the most
4 construction knowledge or experience be tasked with looking at
5 the ones with the plans, as opposed to as-built buildings?

6 A No. They all looked at the same set of plans.

7 Q Okay. So it was purely random whether or not the
8 person with experience would look at ABC's application with
9 its building plans or Company XYZ with its as-built?

10 A No.

11 Q Okay. Well, how would that work, then?

12 A Everyone on the non-identified team reviewed all the
13 applications. So we had two teams. We had the identified
14 team and we had the non-identified team. They worked
15 individually looking at an application that may have had a
16 building in operation. All three of them would look at that
17 individually, and then they would come together with their
18 scores and they would say, hey, are we at consensus with this.
19 So there was no random -- nothing random about it.

20 Q Okay. So the other two evaluators or the non-
21 identified would simply rely upon the person with the
22 experience, or would they bring anything to the table when it
23 comes to reviewing the adequacy of the building size?

24 A Oh, the other two had a lot of experience with
25 health, safety, and welfare, and well as a fire inspector, as

1 well, experience. And that has to do with the adequacy of a
2 building.

3 Q Did you provide any training in terms of reviewing
4 plans?

5 A I did not.

6 Q Did anyone from the Department of Transportation
7 provide any training when it comes to --

8 MR. SHEVORSKI: Taxation.

9 MR. PARKER: Sorry. Thank you.

10 BY MR. PARKER:

11 Q -- Taxation in terms of reviewing plans or adequacy
12 of buildings?

13 A Yes. If you recall, I mentioned Damon Hernandez,
14 Karalin Cronkhite, and Dave Witkowski as folks that helped
15 with that portion of the -- of training the evaluators on how
16 to evaluate those and the expectations.

17 Q The reason I asked, in terms of your training
18 material I saw nothing in the training literature that dealt
19 with adequacy of size of buildings. Are you familiar with
20 anything in written form that dealt that with that?

21 A No,

22 Q Good enough.

23 THE COURT: Sir, am I correct to understand that
24 there were three copies of the applications and each of the
25 temporary employees received one and they all rated them and

1 then they met together to figure out how close or far apart
2 they were, and then they were averaged after they figured out
3 what the scores were?

4 THE WITNESS: Exactly.

5 THE COURT: Okay. Just in case somebody didn't
6 think I was listening.

7 MR. SHEVORSKI: We wouldn't think that, Your Honor.

8 THE COURT: Anything else, Mr. Parker?

9 MR. PARKER: Yes.

10 THE COURT: Okay.

11 BY MR. PARKER:

12 Q A few moments ago Mr. Kemp asked you about the --
13 again the process in terms of looking at the background of
14 these companies and owners. Do you recall that?

15 A Yes.

16 Q Did -- and I believe I asked this of you earlier,
17 but did not go into this level of detail. I believe you said
18 that the evaluators were confined to the information provided
19 by the applicant; is that correct?

20 A Correct.

21 Q And then I think the only other thing you looked at
22 was whatever information was provided to Department of
23 Taxation relative to those owners; is that correct?

24 A Yes.

25 Q Did the Department do any separate background check,

1 something beyond what was on the application and whatever you
2 had in your own files to determine ownership interest?

3 A No.

4 MR. PARKER: All right. Can you pull up 453D.200
5 for me. NRS, not the NAC this time. And 453D.200(6). If you
6 could blow up (6) for me nice and bold.

7 BY MR. PARKER:

8 Q Can you read that to me, Mr. Plaskon.

9 A Can we move it a little bit to the right? It's kind
10 of cut off here. Sorry.

11 Number (6) "Department shall conduct a background
12 check of each prospective owner, officer, and board member of
13 a marijuana establishment license applicant."

14 Q Based upon what you've said, is it true that you in
15 fact did not -- or Department -- let's start with you. You
16 did not do that; is that correct?

17 A That's correct.

18 Q Do you know if anyone in your Department actually
19 performed this function as laid out in the statute?

20 A We have an entire section that's dedicated to
21 background checks on anyone who's working for an
22 establishment, also owners, officers, and board members.

23 Q And it says prospective owner, as well; is that
24 correct?

25 A Yes.

1 Q So if that work was actually done in conformance
2 with this statute, wouldn't you have figured out what Mr. Kemp
3 was just laying out to you in terms of the change perhaps in
4 ownership or prospective ownership?

5 A I'm not following you. I'm sorry.

6 Q Well, I think the Court does.

7 A Okay. I'm sorry. I apologize.

8 THE COURT: That's because I'm in Business Court and
9 I understand how acquisitions work.

10 MR. PARKER: Exactly.

11 THE COURT: Okay.

12 BY MR. PARKER:

13 Q So had you done the background based upon this
14 statute, wouldn't your Department have been alerted to exactly
15 what Mr. Kemp was just saying a second ago, the prospective
16 owner if not the true owner of Nevada Organics would have been
17 discovered. Isn't that correct?

18 A You'd have to ask the program officer in charge of
19 background checks.

20 MR. PARKER: Of course. Nothing further, Your
21 Honor.

22 THE COURT: Thank you.

23 Mr. Shevorski.

24 MR. SHEVORSKI: Nothing from the State, but Mr. Koch
25 has a question.

1 THE COURT: I can tell. But I was going to you
2 first, because, you know, that's the order I go in.

3 MR. KOCH: I apologize for being anxious.

4 RECROSS-EXAMINATION

5 BY MR. KOCH:

6 Q All right. Mr. Plaskon, you're not aware of a
7 transfer of interest being approved by the Department of
8 Taxation for Nevada Organic Remedies because that's not your
9 department, is it?

10 A That's correct.

11 Q So they may have received the approval of that
12 transfer in August 2018 perhaps and you just wouldn't be aware
13 of it.

14 A No.

15 Q Let me show you -- let's go to Plaintiffs'
16 Exhibit 20

17 THE COURT: It's still in the same book for the
18 applications Volume 1. It should be the last document in it.
19 It's really thick.

20 MR. KEMP: Your Honor, I didn't ask any questions
21 about MM's application, so --

22 THE COURT: So?

23 MR. KOCH: It's same question, same attachments he
24 asked about NOR. We should look at MM, how they filled it out
25 so we can how -- consistency.

1 MR. KEMP: That's kind of beyond the scope of the --
2 that beyond the scope of the redirect, Your Honor.

3 THE COURT: I am going to permit it even though it
4 is beyond the scope, but in a very limited fashion. So get
5 there and get done.

6 MR. KOCH: I want to let Mr. Plaskon off the stand
7 today.

8 BY MR. KOCH:

9 Q Mr. Plaskon, can you turn to Bates Number MM0024 in
10 that document.

11 MR. KEMP: Your Honor, the same rule should apply.

12 MR. KOCH: Do you have --

13 MR. KEMP: Yes.

14 MR. KOCH: I thought you put it in. It's an
15 admitted exhibit, though, right? I'm fine with not putting it
16 up.

17 THE COURT: Hold on. I don't know. If it's
18 admitted, it's public.

19 THE CLERK: It's admitted.

20 THE COURT: It's admitted. If it's admitted, it's
21 public, so you can show it.

22 MR. KEMP: If it's admitted, go ahead. Go ahead,
23 Your Honor.

24 MR. KOCH: It's just a list of owners anyway.
25 That's under SB32, information that can be disclosed.

1 All right. If we could put it up on the screen.

2 Page number 24. Oh. We don't have 20? Okay.

3 BY MR. KOCH:

4 Q You have that, Mr. Plaskon, in front of you.

5 A Yes, sir.

6 MR. KOCH: Does the Court have it?

7 THE COURT: Yeah, I have it.

8 BY MR. KOCH:

9 Q Got it?

10 A Yes.

11 Q Mr. Plaskon, on that list, Attachment A for MM
12 Development Company, do you see Planet 13 listed there?

13 A I do not.

14 Q Well, I think there's been some discussion of
15 Planet 13 Holdings as the 100 percent owner of MM Development
16 Company. Are you aware of that?

17 A I do recall a discussion of that.

18 Q And so if they didn't list them here, would you be
19 concerned for the same reasons that were stated before if
20 Planet 13 Holdings was not listed there?

21 A Yes.

22 Q And in fact it may have been the case that the
23 Department was well aware of these public entities owning the
24 companies that were applying, had that information, and were
25 able to consider it according to the regulation and process

1 the Department had; isn't that right?

2 A Yes.

3 MR. KOCH: No further questions.

4 THE COURT: Anything further from any of the
5 other --

6 MR. KEMP: Your Honor, since that was beyond --

7 THE COURT: Wait. Anybody else on the intervenor
8 side?

9 They all said no. Mr. Kemp, briefly.

10 MR. KEMP: Yeah.

11 FURTHER REDIRECT EXAMINATION

12 BY MR. KEMP:

13 Q Sir, isn't it true that what MM Development did was
14 list individuals and they said what percentage of Planet
15 Holdings Company, Inc., they owned as stockholders? There was
16 an asterisk under each one of them that has the percentage of
17 stockholder interest; is that not correct?

18 THE COURT: What page are you on?

19 MR. KEMP: I'm trying to find it, Your Honor.

20 THE COURT: All right. Because I don't --

21 MR. KOCH: If you go to 787.

22 THE COURT: I don't see the asterisks on page 24,
23 but it may be in the other 3 inches.

24 MR. KEMP: It's in Attachment C. Correct. Well, I
25 have the -- Your Honor, it is on page -- let me just find Mr.

1 Grossbeck's for best example.

2 MR. KOCH: You want 787.

3 MR. SHEVORSKI: 787 is your [unintelligible].

4 MR. KEMP: It is on -- I have Attachment C, page --
5 excuse me, Your Honor. Attachment C, page -- it's
6 DOTMM002034.

7 THE COURT: That's not in my book.

8 MR. KEMP: Your Honor, I think what we just -- we
9 tried to break down the exhibits into separate parts. The one
10 for diversity should be a separate part.

11 THE COURT: Okay.

12 MR. KEMP: May I approach the witness, and we'll
13 just use the same procedure we used with Nevada Organic?

14 THE COURT: You may.

15 BY MR. KEMP:

16 Q Sir, would you take a look at page DOTMM002034 and
17 tell me if Mr. Grossbeck, who's listed as an owner, identifies
18 what company he is an owner of.

19 A He's got his name next to "Other marijuana
20 establishment MM Development Company."

21 Q And then the asterisk?

22 A Represents percent of stock held in Planet 13
23 Holdings, Incorporated.

24 Q So what MM Development did was say -- when they
25 listed the officers, owners, they referenced the percentage of

1 stock they listed in the parent company; correct?

2 A Yes.

3 Q That's the appropriate way to do it?

4 A I wasn't one of the evaluators.

5 Q That's more appropriate than what Nevada Organic
6 Remedies did by not -- by indicating the people were owners
7 that weren't really owners?

8 A I was not one of the evaluators.

9 MR. KEMP: Thank you.

10 THE COURT: Anything else?

11 MR. SHEVORSKI: Nothing else.

12 THE COURT: We appreciate your time, sir. I would
13 leave before someone changes their mind.

14 All right. How far behind am I?

15 MR. SHEVORSKI: Two days.

16 MR. GENTILE: We have Dr. Fridland in the morning.

17 THE COURT: What?

18 MR. GENTILE: Dr. Fridland.

19 THE COURT: At 9:30.

20 MR. GENTILE: I think -- did you have somebody at --

21 MR. KEMP: Yeah, Your Honor. We had Dr. Wuthrich.

22 His name's Christian Wuthrich. He's the diversity expert. I
23 also have --

24 MR. SHEVORSKI: Diversity expert?

25 MR. KEMP: He was a witness listed on the disclosure

1 that was filed last week, Your Honor. So he's been listed.

2 MS. SHELL: Was he listed as an expert, Mr. Kemp?

3 THE COURT: So, guys, if this was not a preliminary
4 injunction hearing that was filed shortly before -- or it
5 started shortly before the State answered, I would be in a
6 different position. I haven't done any discovery, I haven't
7 had a Rule 16 conference, so I have been encouraging people to
8 disclose the witnesses who are coming so that everybody could
9 be on the same page and I don't have to have late motions to
10 exclude, which I will, of course, accept if it is somebody you
11 aren't aware of.

12 So who's the plan for tomorrow? I'm trying to
13 figure out how far behind I am, since you told me you need
14 five more days after Friday.

15 MR. KEMP: The plan for tomorrow is to do the
16 linguist and the diversity expert. I also have Stacy Dugan
17 under subpoena. I have not talked to her. I don't even know
18 if I can. But I imagine that's going to be a short one, 15,
19 20 minutes. And then Mr. Gilbert is on standby.

20 THE COURT: And we have Ms. Connor at 1:00.

21 MR. KEMP: Yeah, Ms. Connor at 1:00. I forgot about
22 that.

23 THE COURT: I have that written down. My staff is
24 not scheduling --

25 MR. GENTILE: And we have Mr. Viellion, because he

1 must testify tomorrow. He's leaving Friday. So Ms. Connor --
2 we're kind of rethinking whether we're going to call her or
3 not.

4 THE COURT: You do this to me in every proceeding.
5 You were at the end telling me, Judge, I've decided not to
6 call these four witnesses, and I go, thank you, Dominic,
7 that's wonderful, I appreciate it. But in this case you've
8 got other people who may want to call her, and so there may be
9 an order issue.

10 MR. GENTILE: That's on them. But --

11 THE COURT: Yeah. I know. I'm just sayin'.

12 MR. GENTILE: I'd rather cross her.

13 MR. KOCH: We subpoenaed her, as well, for today.
14 We'd like to have her testify.

15 THE COURT: So if I have a witness who's going to be
16 unavailable at our continued proceedings, I'd rather get that
17 witness taken care of than somebody who's local. That's just
18 my personal feeling. I will let you guys talk about it. Will
19 someone please communicate with Mr. Connor, who was here
20 earlier today, about the fact that you don't anticipate Ms.
21 Connor needing to come tomorrow at 1:00 and we will reschedule
22 her in a subsequent proceeding if that works for you, Mr.
23 Koch.

24 MR. KOCH: I will talk to them and see what we can
25 work out.

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THE COURT: Anything else? See you at 9:30.

MR. HYMANSON: Your Honor, if there's a diversity expert, is there a diversity expert report?

THE COURT: No, Mr. Hymanson. There were no expert reports.

(Court recessed at 4:41 p.m., until the following day,
Thursday, May 30, 2019, at 9:45 a.m.)

* * * * *

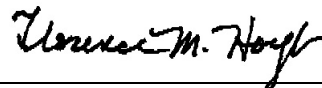
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I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

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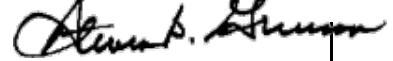
**FLORENCE HOYT
Las Vegas, Nevada 89146**



FLORENCE M. HOYT, TRANSCRIBER

6/14/19

DATE



TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

SERENITY WELLNESS CENTER LLC, .
et al. .

Plaintiffs .

CASE NO. A-19-786962-B

vs. .

STATE OF NEVADA DEPARTMENT OF .
TAXATION .

DEPT. NO. XI

Defendant .

**Transcript of
Proceedings**

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BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

EVIDENTIARY HEARING - DAY 4

THURSDAY, MAY 30, 2019

COURT RECORDER:

TRANSCRIPTION BY:

JILL HAWKINS
District Court

FLORENCE HOYT
Las Vegas, Nevada 89146

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

APPEARANCES:

FOR THE PLAINTIFFS:

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

FOR THE DEFENDANTS:

KETAN BHIRUD, ESQ.
STEVE SHEVORSKI, ESQ.
THERESA HAAR, ESQ.
RUSTY GRAF ESQ.
BRIGID HIGGINS, ESQ.
ERIC HONE, ESQ.
DAVID KOCH, ESQ.
ALINA SHELL, ESQ.
JARED KAHN, ESQ.
PHILIP HYMANSON, ESQ.
JOSEPH GUTERRIEZ, ESQ.

ALSO PRESENT:

CHRISTIAN BALDUCCI, ESQ.
For Stacey Dougan

1 LAS VEGAS, NEVADA, THURSDAY, MAY 30, 2019, 9:49 A.M.

2 (Court was called to order)

3 THE COURT: So what are you guys doing June 17th?

4 MR. PARKER: I can't do the 17th. I can do the 18th
5 and 19th.

6 THE COURT: Well, the problem is Mr. Kemp tells me
7 he needs five days.

8 MR. KEMP: And, Judge, I'm trying to cut that down
9 to four days. But I'm available any day you want, Judge. You
10 are the number one priority on my schedule.

11 THE COURT: Oh, boy.

12 MR. GENTILE: My hearing on the 10th is the earliest
13 date.

14 THE COURT: I have June 10; June 11; the morning of
15 June 12th; June 17; June 18th, understanding Mental Health
16 Court may screw up part of that day; June 19th; and June 20th.

17 MR. GENTILE: The 10th, the afternoon of the 11th,
18 and the 12th I'm available for sure.

19 THE COURT: So do you want me to book the 10th, a
20 portion of the 11th, and a portion of the 12th?

21 MR. GENTILE: Oh, yeah. You could do that.

22 MR. KEMP: Judge, I think we can take the whole day
23 the 11th, but --

24 THE COURT: The 10th, the 11th, and 12th? Because
25 other people from your office --

1 MR. GENTILE: I do have other lawyers from my firm
2 here, yes. I just --

3 THE COURT: And several of them have been here
4 during this hearing.

5 MR. GENTILE: And a lot of them paid attention.

6 THE COURT: Some of them even have talked to
7 witnesses.

8 MR. BULT: So that's 10, 11, 12.

9 THE COURT: 10, 11, 12.

10 Mr. Koch, did you have a trial 10, 11, 12?

11 MR. KOCH: 11 and 12.

12 THE COURT: So you have a trial 11, 12?

13 MR. KOCH: The 11th and 12th. I could do the 10th.

14 THE COURT: So when do you leave for the scout camp?

15 MR. KOCH 18th. I can work around -- I can
16 potentially --

17 THE COURT: Who's driving the kids up?

18 MR. KOCH: I'm one of them, but I think we have
19 someone to drive. I could talk to somebody maybe at lunch
20 today and see about working around that.

21 THE COURT: I mean, you know --

22 (Pause in the proceedings)

23 THE COURT: Okay. So so far, guys, it looks like I
24 have June 10 open for you guys. I'm going to have some
25 information after lunch as to whether the week of June 17th

1 works for everybody else. Mr. Parker says the 17th doesn't
2 work for him.

3 What about the rest of the week, Mr. Parker?

4 MR. PARKER: 18th and 19th are good for me.

5 THE COURT: What are you doing on the 17th?

6 MR. PARKER: Reno on an appeals matter.

7 THE COURT: So you're arguing in Reno.

8 MR. PARKER: Carson City, yes.

9 MR. HYMANSON: I'm in trial from the 16th through
10 the end of the month in California.

11 THE COURT: Really.

12 MR. HYMANSON: Yes.

13 THE COURT: I thought you were back here in Nevada,

14 MR. BULT: I am. So, Your Honor, is 10, 11, 12th
15 gone now?

16 (Pause in the proceedings)

17 THE COURT: It's amazing how us judges let lawyers
18 talk. I will tell you what my theory of that is. If someone
19 needs more rope, I'm going to give it to them.

20 Okay. So you're going to report back -- it sounds
21 like I have some conflicts for people the week of the 17th.
22 They're going to check on their conflicts to see if I can
23 eliminate any of those. Mr. Hymanson says he's going to be in
24 trial in California. My experience is frequently those
25 matters don't go.

1 MR. KOCH: What days the week of the 17th. It was
2 17, 18, 19?

3 THE COURT: I have the whole week. That was what I
4 hoping, I could get you through. I actually go all the way to
5 the 21st, which is the Friday. I have that whole week free.

6 MR. KOCH: Can I approach, Your Honor?

7 THE COURT: You can.

8 (Pause in the proceedings)

9 MR. KEMP: Judge, could I suggest that the people
10 that have the conflicts spend a little time --

11 THE COURT: They were going to try and work it out.
12 I want to talk after lunch.

13 MR. KEMP: Yeah. Right. Okay. Thank you, Your
14 Honor.

15 THE COURT: With the exception of Mr. Hymanson,
16 because what's he going to do, tell a California master
17 calendar clerk that he can't go to trial?

18 MR. KEMP: I've done that before, Your Honor.

19 MR. HYMANSON: It's the third and final setting,
20 Your Honor.

21 (Pause in the proceedings)

22 THE COURT: Okay. Anything else? Are we ready to
23 start a witness?

24 MR. KOCH: I have one matter before, if we could.
25 With respect to the motion to compel from yesterday the Court

1 had inquiry --

2 THE COURT: I'm wondering why Mr. Balducci's here.

3 MS. SHELL: Mr. Koch interrupted me, because I was
4 going to like jump up there.

5 MR. KOCH: The Court had a question with respect to
6 the list of owners or companies being listed on the ownership.
7 Tried to find that in the production that was made. It was
8 not as clear as the Court would have liked in the production
9 that was made. We have since provided as exhibits that will
10 be submitted 5025 and 5026, organizational chart, the transfer
11 letter. We believe they fall within SB32, the identification
12 of the owner. So we're producing it on that basis --

13 THE COURT: Okay.

14 MR. KOCH: -- not waiving. I don't know if any of
15 the other interveners -- I'm not speaking on behalf of them,
16 but the information that will be part of that clearly lays out
17 the owner entities, provides that description with clarity in
18 5025 and 5026.

19 THE COURT: Thank you. So when somebody offers it
20 we'll talk it its admission.

21 Mr. Balducci, why are you here?

22 MR. BALDUCCI: 'Morning, Your Honor.

23 THE COURT: You're not involved in this case, and
24 Fontainebleau's not on today.

25 MR. BALDUCCI: I know. I didn't get here. Missed

1 calendar, unfortunately. I'm here on behalf of Stacey Dougan.
2 She's affiliated with GreenMart, as I understand it. And I
3 was retained just very recently. She is subject to a subpoena
4 for testimony beginning today. She was served less than 48
5 hours ago, single mother, she's a local restaurateur. She's
6 not available today, so I'm here in her behalf. We're happy
7 to work with everyone to find some dates and times that fit
8 within her schedule. Unfortunately, today's just not that
9 day.

10 THE COURT: And who subpoenaed her?

11 MR. KEMP: Your Honor, I subpoenaed her, and
12 yesterday I offered Counsel the opportunity to reschedule Ms.
13 Dougan, and Counsel indicated to me that she had to talk to
14 her co-counsel, whoever that may be. And I have yet to hear
15 from them. So I'm kind of surprised they come in at the last
16 minute and object to the appearance of witness.

17 THE COURT: So it sounds like we just have a
18 scheduling issue.

19 MR. KEMP: But I'm willing to accommodate her.

20 THE COURT: Okay.

21 MR. KEMP: I understand she's a -- she owns some
22 store on Fremont Street and she's a small business owner. I
23 understand that.

24 THE COURT: Okay.

25 MR. BALDUCCI: I'm willing to work with you to find

1 some dates and times.

2 THE COURT: So you guys are going to work it out.
3 Sounds like you have a voluntary agreement to work out a
4 convenient time.

5 MR. KEMP: Yeah. If she wants to do it tomorrow at
6 9:00, I'm fine with that, Your Honor.

7 THE COURT: We have limited availability, though,
8 because of my schedule, which is part of the problem.

9 MR. BALDUCCI: No, I understand, Your Honor.

10 THE COURT: And you know how that works.

11 MR. BALDUCCI: I do. I do.

12 THE COURT: Goodbye.

13 MR. BALDUCCI: So I'll work with Mr. Kemp.

14 THE COURT: So you were successful in having Ms.
15 Dougan not have to show up today.

16 MR. KEMP: Your Honor, I would like to get her on
17 tomorrow sometime --

18 THE COURT: Well, I'll let you guys -- you guys
19 talk.

20 Mr. Parker, you have something before we start with
21 witnesses?

22 MR. PARKER: Yeah. Just something briefly, Your
23 Honor. Mr. Shevorski and I spoke yesterday after court
24 regarding the QC notes and the evaluation notes that we didn't
25 believe were produced. Mr. Shevorksi explained to me that

1 they were not produced and are subject to a privilege log. We
2 wanted to have a discussion about that briefly.

3 THE COURT: I haven't seen a privilege log.

4 MR. PARKER: So perhaps we can do it at the break or
5 sometime later.

6 THE COURT: I have to see the privilege log before I
7 even tell you if I'm going to look at them in camera.

8 MR. SHEVORSKI: Provided it's here. Our team
9 provided it to every counsel involved.will

10 MR. PARKER: So we'll have one printed out, Your
11 Honor.

12 THE COURT: So that I'm not counsel involved
13 [unintelligible] on purpose and not on your service list.

14 MR. PARKER: No worries, Your Honor. We'll provide
15 you with a copy and then have a discussion about it.

16 THE COURT: Okay. So some day -- sometime today
17 somebody wants to talk about a privilege log about the QC
18 notes. I've put a mark on it, and we'll talk about it later.

19 MR. SHEVORSKI: Very good, Your Honor.

20 THE COURT: Any other things before we start with
21 the witness?

22 Who's our next witness?

23 And I'm sorry I was late. I was trying to really
24 hard to get done, but I had a pro per. I had two pro pers
25 this morning.

1 Who's Witness Number 4?

2 MR. KEMP: Your Honor, the next witness will be Dr.
3 Christian Wuthrich.

4 THE COURT: Okay. Sir, if you'd come up please.

5 CHRISTIAN WUTHRICH, Ph.D, PLAINTIFFS' WITNESS, SWORN

6 THE CLERK: Thank you. Please be seated. And
7 please state and spell your name for the record.

8 THE WITNESS: Christian Wuthrich, C-H-R-I-S-T-I-A-N
9 W-U-T-H-R-I-C-H.

10 THE COURT: And, sir, you will notice there is a
11 pitcher of water there by you, there are a number of binders
12 around you which you may need to look at, and there are M&M
13 dispensers behind you if you should need some energy.

14 Mr. Kemp, you may proceed.

15 DIRECT EXAMINATION

16 BY MR. KEMP:

17 Q Doctor, would explain to the Court your education.

18 A I have three degrees, a Ph.D in higher education
19 administration, a Masters degree in second education, and a
20 Bachelors degree in education.

21 Q And where were you employed -- and what are the
22 degrees in?

23 A The Doctors degree is in second education. The
24 Masters degree is in history and second education. Ph.D is
25 higher education administration, which includes student

1 development theory, diversity theory, higher education control
2 and management, and finance.

3 Q When did you get the Ph.D?

4 A Ph.D was awarded in 2009.

5 Q And where were you working at that time?

6 A Washington State University.

7 Q What was your job?

8 A I was several positions ending with dean of
9 students.

10 Q Okay. What time period were you the dean of
11 students at Washington State university?

12 A I was dean of students from 2009 to 2011.

13 Q And what happened after that in terms of your
14 career?

15 A I moved on to a new position at Boise State
16 university, where I am currently the dean of students.

17 Q And when did you start there?

18 A I started there in 2012.

19 Q Okay. Have you had any involvement with diversity?

20 A I have.

21 Q And what's that?

22 A I've had several involvement beginning in my career
23 at Washington State University where I developed some
24 diversity training programs. I taught student development
25 theory, elements of which included identity development,

1 multicultural and diversity issues, and I also participated in
2 the Division of Student Affairs Equity and Diversity in
3 developing equity and inclusion laws and rules for students.

4 Q You're familiar with diversity in general?

5 A I am.

6 Q Are you familiar with diversity hiring practices?

7 A I am.

8 Q Are you familiar with diversity as it applies to
9 college admissions programs?

10 A Yes.

11 Q And are you familiar with diversity policies with
12 regard to discrimination and harassment?

13 A Yes.

14 Q Have you been -- are you familiar with diversity
15 with regards to government procurement programs?

16 A No.

17 Q Okay. Have you administered diversity procurement
18 programs at WSU?

19 A No.

20 Q Okay. Are you a member of any professional groups
21 involved with diversity?

22 A I remember two organizations that have interests and
23 responsibilities for diversity matters. One is the National
24 Association of Student Personnel Administrators, which handles
25 inclusion and diversity efforts from an association level

1 training professionals who work on college campuses. And then
2 secondly, the National Association of Higher Education
3 Administrators, which is a collection of faculty who research
4 diversity matters and provide scholarly articles, journals,
5 and policy information.

6 Q Okay. I notice you're using the terms "diversity"
7 and "inclusion" separately.

8 A Yes.

9 Q Can you explain to the Court what the difference is.

10 A Well, diversity, of course, is policies and rules
11 and laws that may direct folks to accomplish hiring or
12 admissions practices based upon ethnicity and/or race.
13 Whereas inclusion is essentially how you go about doing those
14 matters, including providing support for individuals who are
15 seeking to be included in the community.

16 Q Have you been involved in the design of any
17 diversity programs?

18 A Yes, I have.

19 Q Where at?

20 A At the University of Idaho and at Washington State
21 University. And at the University of Idaho, which was an
22 employer of mine in the late '90s, I developed programs to
23 attract and recruit students to the University. At Washington
24 State University I was a part of the Division of Student
25 Affairs Equity and Diversity elements, which included work

1 with LGBT populations, African-Americans, Asian, Pacific
2 Islanders, Native Americans, and other students.

3 Q And LGBT, is that included in diversity at the
4 present time in some programs?

5 A Yes, it is.

6 Q Okay. Is that a common feature in some diversity
7 programs?

8 A It is a common feature in most. I'd say it's pretty
9 universal.

10 Q Okay. Are you familiar with other governmental
11 programs -- before we start about the Department of Taxation
12 program, are you familiar with other government programs here
13 in the state of Nevada?

14 MR. SHEVORSKI: Objection. Vague.

15 THE COURT: Overruled. You can answer.

16 THE WITNESS: I'm generally familiar with some of
17 the local organizations and agencies such as the Airport
18 Authority, the Las Vegas Metropolitan Police Department, who
19 have programs and protocols for diversity and inclusion
20 efforts.

21 BY MR. KEMP:

22 Q And taking the Airport Authority as an example, what
23 do they focus on in their diversity program?

24 A From what I understand, they focus on ownership and
25 representing that someone needs to be a majority owner in

1 order to be included in the definition for diversity.

2 Q Is there a reason that some diversity programs focus
3 ownership, as opposed to other areas?

4 A My understanding is that ownership is generally tied
5 to governmental contracting where there's an interest that the
6 government has to ensure that diverse owners are represented
7 appropriately in the process or inclusion.

8 Q And have you looked at various materials with regard
9 to this case?

10 A Yes, I have.

11 Q Have you looked at the application form for the
12 recreational marijuana licenses?

13 A Yes, I have.

14 Q And have you also looked at the State's definition
15 of diversity in the application criteria points breakdown?

16 A Yes, I have.

17 Q And, for the record, that's Exhibit 209.

18 Have you also looked at the diversity scoring
19 desktop procedure, Exhibit 111?

20 A Yes, I have.

21 Q And have you looked at the federal guidelines that
22 someone attached to the desktop scoring procedure?

23 A Yes, I have.

24 Q And have you had a chance to review Mr. Plaskon's
25 testimony from May 28th?

1 A Yes, I have.

2 Q Okay. Do you have any opinions regarding the
3 diversity program applied by the Nevada Department of
4 Taxation?

5 A The protocols I reviewed look wholly inadequate to
6 accomplish any diversity and inclusion efforts.

7 THE COURT: And, Mr. Kemp, you're only limiting it
8 to the applications that we're dealing with here, not any
9 other programs they have?

10 MR. KEMP: I'm limiting it to the diversity program
11 of DOT, Your Honor.

12 THE COURT: For the cannabis applications.

13 MR. KEMP: Right.

14 THE COURT: Okay.

15 MR. KEMP: I don't know that they have any others,
16 Your Honor.

17 THE COURT: Well, I'm trying to make sure that I
18 don't get into other areas I don't need to be in.

19 BY MR. KEMP:

20 Q With regards to the marijuana applications do you
21 have an opinion as to whether or not the DOT provided clear
22 guidelines to the applicants as to what would or would not be
23 considered a diverse person?

24 A In reading the material provided I don't believe
25 they provided clear guidance for those individuals.

1 Q Did they provide any guidance whatsoever to the
2 applicants?

3 A Not that I could intelligibly discern from the
4 information I reviewed.

5 Q Okay. With regards to whether or not the DOT even
6 had a diversity program at the outset when the applications
7 were filed do you have an opinion on that?

8 A From the material I reviewed it doesn't appear to me
9 that they had any diversity protocols that the Department
10 utilized for their services or programs.

11 Q Okay. Why do you feel that way?

12 A From reviewing testimony from yesterday, Mr.
13 Plaskon. I believe he was able to articulate appropriately
14 any information that an employee would need to know to
15 administer a program. And I don't believe the documents they
16 provided evidence much forethought, as well.

17 Q Are there definitions that are reasonably or
18 universally accepted for diverse categories?

19 A There are.

20 Q And what are they?

21 A There are six, if you include Caucasians or white
22 individuals. The others are Asian, Pacific Islander, Native
23 American, Alaskan Native, African-American. I think I'm
24 missing one. But there are generally six categories.

25 Q Hispanic?

1 A Hispanic. Thank you.

2 Q Okay. And are there also subcategories of those
3 various categories?

4 A Yes, there are.

5 Q And using Hispanic as an example can you give me a
6 -- focusing on Hispanic can you give me an example of a
7 government program that uses subcategories of Hispanics?

8 A Hispanic is ethnicity, it's not considered race.
9 And so oftentimes you'll see that as a category. And used as
10 ethnicity there are specific things such as college
11 enrollment, sometimes for employment purposes, but there are
12 specific definitions and guidelines as to what Hispanics
13 represent.

14 Q Such as?

15 A Hispanics generally are those who have been
16 historically marginalized that might represent people from
17 South America and Mexico who once were considered Hispanic
18 under a really antiquated, old definition of diversity that
19 the United States used to use.

20 Q Are you talking about the '64 definition that was in
21 the desktop guidelines?

22 A Yes.

23 Q Okay. All right. Let's take a look at Exhibit 209,
24 please. Have you seen this before?

25 A I have.

1 MR. KEMP: Okay. Where are the points awarded,
2 Shane? I think we need the scoring section portion with the
3 definitions. Points awarded for percentage of principals.

4 (Pause in the proceedings)

5 BY MR. KEMP:

6 Q Okay. With regards to this language -- have you
7 seen this before?

8 A Yes, I have.

9 Q And focusing you on the phrase "points awarded for
10 percentage of principals which are non-Caucasian, female, and
11 non-Anglo/European American," do you have an opinion as to
12 whether that is an adequate diversity definition?

13 A That is not.

14 Q Why is that?

15 A "And" I think confuses this issue, female and non-
16 Anglo.

17 Q The word "and" is not appropriate?

18 A The word "and" should be "or.:

19 Q Okay. Pretty obvious mistake?

20 A Well, you know, I believe if you have a good grasp
21 on what is diversity, that wouldn't be one to miss, because it
22 changes the statement.

23 Q Okay. And do you have any criticisms of the use of
24 that definition?

25 A You know, it lacks the degree of specificity needed

1 in order to intelligently discern a score, to be able to rank
2 an individual or an organization.

3 Q And even if they had given the applicants this
4 definition, it wouldn't be able to be applied?

5 A No, I don't believe it can be appropriately applied.

6 Q And with regards to requiring it be female and non-
7 Anglo/European American what is the significance of requiring
8 it "and"?

9 A Well, so if you're going to represent female and
10 non-Anglo Americans, that's going to rule out any Caucasian
11 female or person representing to be female if they're
12 Caucasian.

13 Q And what would the effect be on male African-
14 Americans?

15 A I'm sorry?

16 Q Would they be ruled out, too? If you have to be
17 female and --

18 THE COURT: He's asking you if black males would fit
19 in that definition, sir.

20 BY MR. KEMP:

21 Q Black male couldn't be a female?

22 A Well, a black male -- you may have an individual
23 who's transgender who chooses to represent themselves as --

24 Q Let's leave that out.

25 A Yeah.

1 Q But it says "female and"; correct?

2 A Uh-huh.

3 Q So you have to be a minority that's a female to
4 literally come within this definition; correct?

5 A As I read it, yes, that's correct.

6 Q Is that appropriate?

7 A Not if you're attempting to attain diversity in your
8 final results.

9 MR. KEMP: Okay. Let's take a look at the federal
10 guidelines. Can we pop those up, Shane. This is from the
11 diversity desktop calculator. Pop that up and zoom in a
12 little bit, make it bigger.

13 THE COURT: Can you see that, sir?

14 THE WITNESS: Yes, I can.

15 THE COURT: All right.

16 BY MR. KEMP:

17 Q Okay. And are these the '64 guidelines that the
18 federal government came up with?

19 A Yes, they are.

20 Q Are they still being used today, 55 years later?

21 A No, they're not.

22 Q And has the federal government changed its
23 guidelines for definition of minority?

24 A Yes, they have.

25 Q And without getting too elaborate, can you tell me

1 when the change was made and some of the basic features of the
2 change.

3 A The changes sought to provide more clarity as to
4 what the federal government considered diverse for its
5 programs, which include the entirety of the federal
6 government. And specifically they separated Asian into Asian
7 and Pacific Islander and provided some additional countries to
8 illustrate their examples. And they also provided a
9 definition as to what constituted a Caucasian or white person.

10 Q When did that happen?

11 A That happened in 2007 before the delivery of the
12 2010 census.

13 Q To the best of your knowledge does any government
14 use this 55-year-old definition except for the Nevada
15 Department of Taxation?

16 A No.

17 Q Okay. Do you think it's appropriate to use the 55-
18 year-old definition of minorities?

19 A No. It is antiquated.

20 Q And how do people find this definition?

21 A Well, I Googled it when I saw it, because it struck
22 me as antiquated. So there's one manner. But I think more
23 importantly, if you're reading this and expecting it to be
24 accurate, it would evidence to me that you're not familiar
25 with what constitutes diversity and inclusion efforts for

1 administering a program.

2 Q Okay. And earlier you referenced a clarification
3 for Hispanics with regards to their country of origin. How
4 does this treat Hispanics with regard to their country of
5 origin?

6 A This references specific countries under a racial
7 category, rather than an ethnic category.

8 MR. KEMP: Can you blow that up a little bit, Shane,
9 the Section B.

10 BY MR. KEMP:

11 Q Okay. And what do you mean by that?

12 A Well, this speaks to Hispanic as race, and Hispanics
13 are no longer considered under a racial category. It's
14 considered an ethnic category. And in reference to what this
15 might constitute, particularly when you read "other Spanish
16 culture or origin regardless of race, that might constitute
17 individuals who come from Spain.

18 Q So would an individual that came from Spain be
19 defined as Hispanic in this category?

20 A Yes.

21 Q And would it be -- an individual from Spain be
22 defined as Hispanic in the first definition we looked at,
23 which was non-Caucasian female and non-Anglo/European
24 American?

25 A Under this definition would say yes.

1 Q Okay. And so the definitions are inconsistent with
2 regards to any person that's an applicant from Spain?

3 A Yes.

4 Q And are there other countries that these two
5 definitions would potentially be inconsistent with regards to?

6 A I think if you get into the Caribbean and countries
7 in the area of South America, yes.

8 Q Okay. And is it your understanding that the State
9 relied in part upon the applicants to self identify their
10 diversity?

11 A From reading the application, yes.

12 Q And from reading Mr. Plaskon's testimony?

13 A Yes.

14 Q How could an applicant possibly accurate self
15 identify himself as diverse or nondiverse if that applicant
16 did not know what the definition of "diversity" was?

17 A For the purpose of being evaluated I don't know how
18 they would do that.

19 Q Okay. Is it possible?

20 A I think if you're attempting to have outcomes as
21 stated in the material I read, the law and other things, no.

22 Q Outcomes that are focused on true diversity.

23 A Yes.

24 Q Okay. All right. And in general what's your
25 summary opinion in this case?

1 A I think as this was administered it's horribly
2 antiquated and ineffective, and the results will not lead this
3 agency to achieve diversity.

4 Q Does it appear to you that the DOT gave thoughtful
5 consideration to this area of the application?

6 A They did not.

7 Q And is that potentially a problem for diversity
8 programs?

9 A You know, I think if you're trying to reach certain
10 milestones and markers, it would be a problem. It results in
11 actually furthering discriminatory problems.

12 MR. KEMP: No further questions.

13 THE COURT: Thank you.

14 Anyone else on the plaintiffs' group wish to
15 examine? Mr. Parker.

16 MR. PARKER: You gave me a look, Your Honor.

17 THE COURT: Well, no. I was looking because you
18 were sitting there.

19 MR. PARKER: I felt singled out.

20 THE COURT: Oh. All right. Sorry, Mr. Parker. I
21 didn't mean to --

22 MR. PARKER: No, not for the obvious reasons.

23 THE COURT: -- didn't mean to single you out.

24 MR. PARKER: Let just put that out there.

25 //

DIRECT EXAMINATION

BY MR. PARKER:

Q Doctor, how are you?

A Fine, thank you.

Q Doctor, what is the goal -- and I'm asking this question because I asked it of Mr. Plaskon yesterday. What is the goal of adding diversity to an application process? Can you tell me what the answer is? Because he did not know the answer yesterday.

A And you're speaking to this process here today?

Q Let's talk about generally, and then to this process.

A Generally it's to achieve diversity so that all individuals can be included in societal issues and benefits.

Q And is there a benefit for having diversity?

A Yes, there is.

Q And tell me what that benefit is.

A Well, it benefits our entire community. It benefits those who work with individuals, who do business with individuals, for individual freedoms and liberties.

Q So is there a benefit for perhaps Asians or Native Americans to be able to go into an establishment where there are also Asians or Native Americans that own or operate that establishment?

A Yes, I believe that.

1 Q And why do you believe that?

2 A Because we want individuals to feel included. And I
3 mentioned earlier about diversity and inclusion.

4 Q Right.

5 A It's important for the inclusion piece, not just to
6 be able to represent.

7 Q Okay. From your review of the documents did you --
8 were you able to determine whether or not there was a single
9 minority -- based upon your understanding of what racial --
10 what races there are in this country identified and recognized
11 by the United States Government and the applicants that
12 applied for these licenses, did you see a single minority
13 owner awarded a license in this?

14 A All I saw in the materials that were identified by
15 the State were the names of individuals where they're a board
16 member. It didn't include race or ethnicity in information
17 that I saw.

18 Q All right. If in fact not a single minority owner
19 received a license, would you agree with me that the purpose
20 behind including diversity in the application process was not
21 achieved?

22 A Yes. It failed.

23 MR. PARKER: That's all I have. Thank you very
24 much.

25 THE COURT: Any additional plaintiffs wish to

1 inquire?

2 If I could go to the State, Mr. Shevorski.

3 MR. SHEVORSKI: Thank you, Your Honor

4 (Pause in the proceedings)

5 CROSS-EXAMINATION

6 BY MR. SHEVORSKI:

7 Q Good morning. Is it Dr. Wuthrich?

8 A Yes. Good morning.

9 Q My name is Steven Shevorski. I'm with the State of
10 Nevada. It's a pleasure to meet with you today.

11 As I understand it, part of your Ph.D was -- in
12 trying to obtain and you did obtain that degree, was studying
13 diversity.

14 A Yes, I did.

15 Q And so can you tell me why you personally thought
16 that was worth your time.

17 A You know, if we're trying to achieve equitable
18 results for individuals, those that administrator higher
19 education programs, which is what I was doing at the time and
20 still do today, it's important to understand that material and
21 be able to represent or to include individuals and understand
22 what they're coming from to achieve the State's goals in this
23 case.

24 Q And you mentioned with respect to higher education
25 that that was part of your studying, is diversity in the

1 context of higher education I think you mentioned. Do you
2 study diversity in the context of any other aspect of life,
3 for example, just using this example, in terms of a business
4 and a business's place in the community?

5 A Yes. And universities are businesses. Universities
6 are part of everyday life.

7 Q And so -- and what did you -- and in terms of the --
8 I'm thinking of a Dartmouth College case, Your Honor.

9 In thinking of diversity in the context of
10 businesses you used universities. Can you explain what you
11 mean by -- why is diversity in your opinion in the context of
12 businesses and their place in the community.

13 A Well, you know, outside the law, which requires us
14 to not discriminate on the basis of race and ethnicity, there
15 are other important social benefits which I alluded to
16 earlier, including having individuals be included in society,
17 being able to represent --

18 Q Let me stop you, because I think you're going on to
19 a list. So individuals included in society. What do you mean
20 by that?

21 A Well, I think you need to have equal protection for
22 individuals, those that apply for positions of employment and
23 those who are admitted to institutions. If they're using
24 race. Public institutions don't often use race, but some
25 private institutions. We want individuals to be able to go,

1 for example, and be schoolteacher and to understand the issues
2 that a person of color might be impacted by. Those that are
3 trained in schools of business, same thing.

4 Q What about entrepreneurs, giving advantage to
5 entrepreneurs who want to open a business in a particular
6 community? Is diversity important in your opinion there,
7 giving advantage to minority entrepreneurs?

8 A You know if the state says it's important, then
9 it's important. If it's a legitimate state interest, it may
10 well be important.

11 Q I'm sorry. Could you say that again.

12 A If a state believes that diversity is important and
13 they're writing laws that don't conflict with other federal
14 laws, then it may be important. I think it's up to those
15 writing those laws.

16 Q And so certainly a rational choice for them, isn't
17 it?

18 A Pardon me?

19 Q It's a rational choice to believe that diversity is
20 important -- giving opportunity to entrepreneurs in opening a
21 business, that's a rational choice, isn't it, for the state?

22 A Yes.

23 Q You'd applaud that decision, wouldn't you? You've
24 dedicated part of your professional life to diversity.

25 A Would I applaud that decision? Well, I think for

1 some of us it's required in terms of if you're an employee of
2 an organization, particularly a state, who has rules and laws
3 and compliance efforts that are dedicated towards ensuring
4 equal protection or [unintelligible] to laws, then yes.

5 Q Okay. You mentioned that you reviewed the
6 transcript of Mr. Plaskon.

7 A Yes.

8 Q And what position did Mr. Plaskon have with the
9 Department of Taxation?

10 A Near as I could discern, he was a facilitator. I'm
11 not sure what that means in government speak.

12 Q Do you know one way or the other whether or not he
13 was responsible for administering any program within the
14 Department of Taxation separate and apart from the marijuana
15 licensing?

16 A Not that I could determine from the transcript, no.

17 Q And you currently in the state of Washington, or in
18 the state of Idaho?

19 A I'm in the state of Idaho.

20 Q Okay. And you did part of your education in the
21 state of Washington?

22 A I completed a Ph.D in the state of Washington.

23 Q Let's go to the other side of the Coasts. Let's do
24 the state of Maine. Are you familiar with the definition of
25 diversity in the state of Maine?

1 A No.

2 Q Are you familiar with -- let's go down the Coast --
3 with the definition of diversity in the state of
4 Massachusetts?

5 A No.

6 Q Are you familiar with the definition of diversity
7 with respect to any state on the right coast? Let's call that
8 the East Coast, Your Honor.

9 A The East Coast? Not as an individual state might
10 apply it. I'm familiar with it as the federal government
11 would apply it.

12 Q You're not -- so you're not familiar with the
13 definition of diversity with respect to any state in the
14 United States of America?

15 A Well, if they're going to -- no, I'm not. I'll
16 leave it at that.

17 Q Is the state of Nevada, to your knowledge, required
18 by any federal law to adopt a specific definition of diversity
19 not -- we'll say not inconsistent with the Constitution?
20 United States Constitution.

21 A I'd say yes and no.

22 Q Please explain your answer.

23 A You know, yes if you're going to be doing business
24 with the federal government, if you're accepting their money,
25 you're required to follow the guidelines in the specific

1 areas. In other ways the answer may be no other than equal
2 protection with reference to civil rights laws that started in
3 '64 and ended up in the '70s.

4 Q So based on your answer if the state of Nevada
5 wanted to adopt the definition of minority from the 1964 Civil
6 Rights Act, it's free to do so?

7 A I don't believe they are.

8 Q And why is that, sir?

9 A Well, that particular reference was reference to the
10 EEOC, which is an organization that handles responses to
11 discrimination complaints, and so the answer really lies in
12 some of the details there. But generally no.

13 Q So you're saying that the EEOC commands the state of
14 Nevada to use a different definition of diversity with respect
15 to how it's going to use diversity in a marijuana application?
16 Is that what you're telling me?

17 A I think -- I think if the state of Nevada wants to
18 achieve diversity, they need to have better definitions.

19 Q I'm sorry. That's not my question. My question was
20 does the EEOC command the state of Nevada to use a different
21 definition of diversity to score the applications for the
22 marijuana licensure?

23 A No.

24 Q So state of Nevada can adopt whatever definition it
25 wants to so long as that definition does not violate the

1 United States Constitution; isn't that correct?

2 A For? Which procedure are you referencing?

3 Q For the [unintelligible] we're talking about,
4 applications for marijuana, retail marijuana businesses.

5 A Yes.

6 Q Thank you. Are you familiar with the scientific
7 method?

8 A I am.

9 Q What is it?

10 A The scientific method is generally procedures and
11 protocols, methodologies to test theories, obtaining the
12 results.

13 Q Right. And does it have particular elements that
14 are generally understood?

15 A Depends on the theory.

16 Q What would be the elements that you would choose to
17 describe the scientific method?

18 A You have -- if you're talking about a true
19 scientific method, you'd have a control group, you'd have a
20 test group, you'd have something to test, you'd run that
21 protocol through, and you'd have results based upon an
22 analysis.

23 Q Okay. My friend Mr. Kemp asked you a number of
24 questions about applicants being confused by the reference to
25 diversity in the application. Do you recall that?

1 A Yes.

2 Q Okay. And you said that you thought it was
3 confusing, that people could be -- you couldn't conceive of
4 them not being confused; is that correct?

5 A Yes.

6 Q Did you employ the scientific method to find out if
7 that was actually the case?

8 A You wouldn't apply the scientific method that we
9 referenced here a minute ago to analyze that issue.

10 Q You wouldn't? What about a survey? Did you do a
11 survey of applicants --

12 A I did not.

13 Q -- to see if they were actually confused?

14 A I did not.

15 Q Have you spoken to any applicants to see if they
16 were confused?

17 A I do not know who the applicants are.

18 Q Okay. So you've never spoken to Mr. Kemp's clients
19 to see if they were actually confused by the application?

20 A I do not know who their clients are.

21 Q Mr. Gentile's clients?

22 A I do not know their client.

23 Q Mr. Parker's clients?

24 A Do not know his client.

25 Q Mr. Bult's clients?

1 A I don't know his client.

2 Q So you're not aware that any applicant was actually
3 confused by the reference to diversity in the application?

4 A I do not know.

5 Q Have you read the current definition of "diversity"
6 in Title 20 United States Code, Section 1067(k)?

7 A Not recently.

8 Q Okay. It says, "The term 'minority' means American
9 Indian, Alaskan Native, black not of Hispanic origin, Hispanic
10 (including persons of Mexican, Puerto Rican, Cuban, and
11 Central or South America origin), Pacific Islander, or other
12 ethnic group underrepresented in science and engineering."

13 Before I think you said that the definition of
14 Hispanic was antiquated in the one the Department was using;
15 is that correct?

16 A Yes.

17 Q You would agree with me that at least in Section
18 1067(k) it doesn't exclude that definition, does it? It says
19 "including."

20 A Do you have a copy of that? I don't know if that's
21 even current law.

22 Q I have a copy of it, and it's got my highlights on
23 it, but I'm happy to give it to you. Would you like to see
24 it?

25 THE COURT: So that's the Armed Forces'?

1 MR. SHEVORSKI: Yes.

2 THE COURT: Okay. I just Googled Title 10, because
3 I wasn't familiar with which group.

4 MR. SHEVORSKI: May I approach, Your Honor?

5 THE COURT: Yes, you can.

6 BY MR. SHEVORSKI:

7 Q You can have it.

8 A Okay. This is referencing a diversity issue for the
9 delivery of institutional financial aid.

10 Q That's right.

11 A Yeah.

12 Q All right. So before you said that the -- the
13 entire federal government that the state's definition of
14 Hispanic was inconsistent with how current federal law is in
15 the entire federal government.

16 A Uh-huh.

17 Q You'd have to agree that that was not correct?

18 A This references unrepresented groups in science and
19 engineering, not as a general population approval, the way I
20 read it.

21 Q Right. But the plain language of the text in
22 reference to Hispanic says right next to it, including those
23 groups. Doesn't say only those groups, does it?

24 A It does, but it -- this is references minorities,
25 it's not representing race and ethnicity issues, which are

1 different if you want to get into the slicing and dicing.

2 Q That statute doesn't limit the definition of
3 Hispanic the way your prior testimony was that it couldn't be
4 someone of Spanish heritage the way you conceive of diversity.

5 A It wouldn't -- for the purpose of diversity issues,
6 what I mentioned earlier, I believe anybody of European
7 descent would not be included in diversity, they'd be included
8 as a white individual.

9 Q Does that definition exclude them?

10 A This speaks to Mexicans, Puerto Ricans, Cubans, and
11 Central or South American of origin.

12 Q Including, but not limited to; right?

13 A Well, there could be other individuals there, but if
14 you want to speak to Hispanic to get into the details, I don't
15 believe that's an appropriate reference.

16 Q Okay. May I have that back.

17 A You may.

18 MR. SHEVORSKI: May I approach, Your Honor?

19 THE COURT: You may.

20 MR. SHEVORSKI: Thank you.

21 I have no further questions, Your Honor.

22 THE COURT: Any of the defendants in intervention
23 wish to inquire?

24 Mr. Koch.

25 //

CROSS-EXAMINATION

BY MR. KOCH:

Q Hi, Mr. Wuthrich. My name is David Koch. I represent one of the companies that's participating in this litigation.

Did you review any of the applications that were submitted to the State by companies looking to obtain a marijuana license?

A I saw only blank applications, I guess. I didn't review any of the applicants, no.

Q Okay. Well, you did -- you were aware -- let me ask. When was the first time you were contacted about this case?

A Maybe two weeks, week and a half.

Q Okay. And you met with or talked with Mr. Kemp prior to appearing for your testimony today?

A Yes, I did.

Q That item about the female and non-Anglo, was that discussed during that meeting you had with Mr. Kemp?

A It's been discussed on multiple occasions.

Q So did Mr. Kemp bring that up and ask your opinion on it?

A No, he did not.

Q Did you review any application that had any information with respect to anyone's ethnicity or race on it,

1 any portion of an application?

2 A No.

3 Q Did you find any instance in the review that you did
4 to prepare for today where an applicant was listed as a black
5 male, but was not given credit for diversity points as
6 described in the State's program?

7 A I reviewed lots of material. I've seen the scores.
8 But I couldn't discern from that how that might have been
9 reached without looking at the actual application.

10 Q Right. So you've opined that based upon the "and"
11 definition that Mr. Kemp has talked about a lot during this
12 case that theoretically there could be somebody who could be a
13 black male who didn't receive credit for being diverse, but
14 you're not actually aware of any instance of that; correct?

15 A I'm not.

16 Q What about anyone from Spain? Based upon your
17 explanation you said there could be some confusion about that,
18 if someone was from Spain whether they would be credited for
19 that or not or any instance where someone was confused on
20 that?

21 A Not having seen the applications, no.

22 Q Okay. Does Boise State have an admissions policy
23 with respect to diversity?

24 A No, we -- well, we have an admissions policy, and we
25 provide equal protection to our applicants, but we don't have

1 a policy that sets aside race and ethnicity for the purposes
2 of admission.

3 Q Okay. It doesn't give extra points for being either
4 female or of a minority?

5 A We have no admissions policy that references extra
6 points for the purposes of admission.

7 Q Okay. So you in your background and history have
8 not worked with determining admissions based upon diversity?

9 A No.

10 Q Do you know if other colleges have admission
11 policies that include diversity as a specific portion of them?

12 A Most public institutions don't, with exception of
13 some flagship places, like Michigan, Texas, and some private
14 institutions, such as Harvard, Yale.

15 Q Okay. What is let's say -- Michigan you referenced.
16 What is their diversity policy?

17 A They have a competitive application process, and
18 they use a holistic admissions process, and that process
19 allows for individuals to receive points or credit for diverse
20 experiences.

21 Q Diverse experiences? What about race or gender?

22 A Yes, race and gender, as well. Generally race.
23 Gender isn't usually of concern when you reference race and
24 ethnicity. In fact, that's a whole separate matter. Gender
25 is a whole separate matter from race and ethnicity.

1 Q Okay. And Michigan's policy, as you understand it,
2 is a permitted policy that Michigan has chosen to adopt?

3 A It's been litigated, and they've reached a point
4 where I guess it's for now generally accepted.

5 Q This -- the federal description of "diversity" said
6 it was adopted in 1964, abandoned 2007. Is that when it was
7 changed?

8 A Well, I don't believe that that language was adopted
9 in 1964. If you read the 1964 law, it speaks to race, we
10 discriminate on the basis of race, which then at the time
11 references generally a binary, black, white. Later on and
12 things evolve, right, the definition that we saw was populated
13 for the explicit purpose of reaching those goals. But the law
14 does not reference people by ethnicity or race, quote unquote.

15 Q That definition, though, you said it was antiquated;
16 is that right?

17 A Yes.

18 Q When did it become antiquated?

19 A In 2007.

20 Q And the matters that we're dealing with here are
21 2018 is when the application took place. Did the federal
22 government send out a notice to all states that this
23 definition should no longer be used for any internal state
24 programs?

25 A If you're doing business with the federal

1 government, you probably received that information, yes.

2 Q What if you're not doing business with the federal
3 government?

4 A Such as?

5 Q Selling marijuana.

6 A You have a good question.

7 THE COURT: Yeah, probably not.

8 THE WITNESS: Probably not, yeah.

9 MR. KEMP: No further questions.

10 MR. GENTILE: [Unintelligible] other announcements
11 out there.

12 THE COURT: Anyone else on the defendants in
13 intervention team who would like to make inquiry?

14 Anyone else?

15 MR. GENTILE: Your Honor, I did no direct, but
16 something that came up on cross impacts, my case, I so I'd
17 like to --

18 THE COURT: You may ask a question or two.

19 MR. GENTILE: Thank you.

20 DIRECT EXAMINATION

21 BY MR. GENTILE:

22 Q Doctor.

23 A Good morning.

24 Q I want to mention three terms, and then I want you
25 to address them, assuming that you in the course of your

1 developing your expertise have encountered them.

2 The first term we've already dealt with. That's
3 diversity, the second firm is affirmative action, and the
4 third term is antidiscrimination. Are they all the same?

5 A They're three separate matters.

6 Q Okay. Why don't you tell us first -- let's start
7 from the last -- well, let's start with the first. Let's talk
8 about diversity.

9 A What would you like to know about it?

10 Q I'd like to know what diversity is.

11 A Diversity represents a number of things generally.
12 If you want to count in specifics, it represents a
13 representation of individuals of different races and
14 ethnicities in employment and in other public matters, in
15 school admissions. It references making sure that in hiring
16 -- I'll leave it. Leave it at that.

17 Q Okay. Now, with regard to affirmative action, in
18 recent years, the last 10 years or so, the United States
19 Supreme Court's turned around a little bit on their attitude
20 about affirmative action when the state's involved, haven't
21 they?

22 A Somewhat.

23 Q Okay. What is affirmative action?

24 A Affirmative action is to make sure that you're
25 including specific individuals based upon the definition that

1 you might provide. Some states, for example, include veterans
2 as a protected class. But to ensure that you're at least
3 advancing qualified candidates into an applicant pool for
4 consideration.

5 Q And what is antidiscrimination?

6 A That's policies and procedures and activities
7 sometimes based on compliance to ensure that a program or
8 service provided by a governmental agency or a business, if it
9 falls into that category, isn't discriminating against
10 clientele and individuals who might be doing business or
11 having a relationship or interaction with that group.

12 Q Now, on your examination by my worthy adversary Mr.
13 Shevorski --

14 MR. SHEVORSKI: Not his friend.

15 BY MR. GENTILE:

16 Q -- you said, and I didn't write it down verbatim,
17 but I'm going to try to draw you back to it if you recall. He
18 asked you a question that presumed that the State had enacted
19 as part of some legislation or State action diversity. And
20 you responded to that by saying that, well, if the state
21 enacted it as part of the law...." What did you say about
22 that, do you remember?

23 A Can we read back that part of the testimony?

24 THE COURT: Nope, we can't, sir. You've got to
25 remember.

1 BY MR. GENTILE:

2 Q No, we can't.

3 A Repeat your question for me.

4 Q Well, let me say it a little differently. You
5 assumed, because his question did, that a state had enacted a
6 law that included diversity as a mandatory component. And you
7 said that if the state passes a law that deems diversity
8 important, then it's important. I think that's the words that
9 you actually used.

10 A So, yes, I've read that law, the law referencing
11 this issue today, and there's specific language in it that
12 references it should be open to diversity.

13 Q Now, let me ask you. You said you read that law.
14 Are you aware of Article 19 of the Nevada Constitution?

15 A No. What is it?

16 Q Do you know what an initiative is?

17 A Yes.

18 Q All right. Is it your understanding that an
19 initiative is direct democracy with the people deciding what
20 the law is going to be?

21 A Yes.

22 Q Okay. Have you read the ballot question that
23 created the ultimate legislation in this case?

24 A No.

25 Q Okay. With regard to what you called the law that

1 contained this concept of diversity, the law that you read and
2 that you call law is a regulation; am I right? It's part of
3 the Nevada Administrative Code?

4 A Yes, it is.

5 Q And it was not part of the ballot of question, was
6 it?

7 A Having not read the ballot question, I couldn't tell
8 you.

9 Q All right. But what you did read where you got this
10 idea that the law of Nevada required diversity with regard to
11 medical -- excuse me, with regard to marijuana retail
12 establishments emanated from the regulation?

13 A My understanding is from that regulation, yes.

14 MR. GENTILE: I don't have anything further.

15 THE COURT: Hold on. Mr. Kemp, did you want to
16 redirect at all?

17 MR. KEMP: I just have one question, Your Honor.

18 THE COURT: Okay.

19 REDIRECT EXAMINATION

20 BY MR. KEMP:

21 Q Sir, was the reason that you did not look at the
22 individual applications -- was the reason you didn't look at
23 them, was it your understanding that the Court has entered a
24 protective order at the request of the defendants or
25 interveners and the State that precludes experts, except a

1 statistician, from looking at individual applications?

2 A That's my understanding, yes.

3 MR. KEMP: Thank you.

4 THE COURT: And that's what I did, so --

5 Okay. We're going to around the room one more time
6 because of Mr. Gentile's questions, starting with Mr.
7 Shevorski.

8 MR. SHEVORSKI: Thank you, Your Honor.

9 RECROSS-EXAMINATION

10 BY MR. SHEVORSKI:

11 Q My worthy adversary Mr. Gentile asked you about a
12 number of --

13 THE COURT: You do better with "friend." It just
14 sounds better coming out of your mouth.

15 MR. SHEVORSKI: Very true, Your Honor. And I have.

16 BY MR. SHEVORSKI:

17 Q And he was asking you about the referendum in his
18 reference to the regulation. I have one question. You're not
19 a judge, are you?

20 A I'm not a judge.

21 MR. SHEVORSKI: Thank you.

22 THE COURT: Anyone else on the defendants
23 intervention?

24 Anyone else on the plaintiffs' side?

25 Thank you, sir. I would leave before they change

1 their minds.

2 Next witness.

3 Have a nice day, sir. Travel safely.

4 MR. SAVARESE: Dr. Valerie Fridland, Your Honor.

5 THE COURT: And this is my linguistic expert?

6 MR. SAVARESE: That's correct, Your Honor. And good
7 morning, Your Honor.

8 THE COURT: Good morning.

9 Next witness.

10 Have a nice day, sir. Travel safely.

11 MR. SAVARESE: Dr. Valerie Fridland, Your Honor.

12 THE COURT: And this is my linguistic expert?

13 MR. SAVARESE: That's correct, Your Honor.

14 THE COURT: Thank you.

15 MR. SAVARESE: And good morning, Your Honor.

16 THE COURT: Good morning.

17 VALERIE FRIDLAND, Ph.D, PLAINTIFFS' WITNESS, SWORN

18 THE CLERK: Please be seated. And please state and
19 spell your name for the record.

20 THE WITNESS: My name is Valerie Fridland.
21 V-A-L-E-R-I-E, last name F-R-I-D-L-A-N-D.

22 THE COURT: Miss, there are pitchers of water there.
23 You have tons of exhibit binders around you. The marshal is
24 refilling your water pitcher.

25 THE WITNESS: Oh. I was going to say, I don't see

1 the pitcher, but thank you.

2 THE COURT: He took it with him to refill it for
3 you. And there are M&Ms in some of those dispensers if you
4 should need some energy.

5 THE WITNESS: Okay, thank you.

6 THE COURT: Okay.

7 THE WITNESS: Thank you, Your Honor.

8 THE COURT: You're welcome.

9 DIRECT EXAMINATION

10 BY MR. SAVARESE:

11 Q Dr. Fridland, what is your occupation?

12 A I am a linguist, a theoretical linguist specializing
13 in Sociolinguistics at the University of Nevada, Reno.

14 Q And what -- you are a full professor?

15 A I am a full professor, yes.

16 Q And you are also the director of the graduate
17 studies in the English Department?

18 A I am the director of graduate studies for English,
19 and a full professor in linguistics in that same department.

20 Q And how long have you been employed there as a full
21 professor of Linguistics?

22 A I have been there for quite some time. I started in
23 1999, so I'm on my 20th year, I'm afraid.

24 Q Congratulations.

25 A I started when I was two.

1 Q Now, what is your educational background?

2 A I have a Ph.D. in theoretical linguistics from
3 Michigan State. I have a Master's degree in English from the
4 University of Memphis and I have a Bachelor's degree from the
5 School of Languages and Linguistics at Georgetown University.

6 Q And have you received any grants or awards in your
7 field?

8 A I have received many grants and awards. I've been
9 funded for many years by the National Science Foundation from
10 the Behavioral and Cognitive Sciences Division. I've also
11 received numerous grants from the university itself and I've
12 also received a national award from the American Dialect
13 Society for the best paper on American speech that I
14 published.

15 Q How about publications? Are you a published author?

16 A I have published a few things, yes.

17 Q In your discipline?

18 A Uh-huh, yes. I have published -- I have several
19 books. I have one book on Language in Society and also a
20 companion video series for the Great Courses. I have two
21 volumes I've published on speech in the west called, very
22 inventively, Speech in the Western States. I am finishing my
23 third volume of that series and I am also completing a book on
24 socio-phonetics for Cambridge University Press as we speak.
25 In terms of articles and book chapters, I would say -- I

1 haven't actually counted in many years, but at least 40,
2 probably 50 articles or chapters.

3 Q Now, Dr. Fridland, were you provided by me with some
4 materials to review and to conduct a comparative analysis of
5 those materials with principles of your discipline?

6 A Yes. I have reviewed the statute language, the
7 language of the regulations, and as well as provided with a
8 copy of the application.

9 Q And the statute, that would be NRS 453D. That's the
10 chapter and you read that in its entirety?

11 A I did, yes.

12 Q And you were provided with the Nevada Administrative
13 Code with a corresponding number, 453D?

14 A Yes, I was.

15 Q And you have read that?

16 A I have.

17 Q And you have read the application, studied the
18 application for licensing that's at issue in this case?

19 A Yes, the application as well.

20 THE COURT: The blank application; right?

21 THE WITNESS: Yes. Blank.

22 MR. SAVARESE: A blank application.

23 THE WITNESS: Yes.

24 MR. SAVARESE: Yes. Blank.

25 //

1 BY MR. SAVARESE:

2 Q Now, before we -- I ask you anything about that, not
3 to be pedantic with the Court, but can you just for the record
4 tell us what is the discipline of linguistics?

5 A Sure. The discipline of linguistics is a
6 theoretical field that studies the underlying structure of a
7 language. So a lot of people think linguistics is about
8 languages, so do you speak French or Spanish, but actually
9 what we study in theoretical linguistics is how is it that
10 speakers of languages universally are able to understand the
11 meaning of sounds, of words and of sentences.

12 Q Now, within that discipline, within that category of
13 linguistics, is there a concept known as semantics?

14 A Yes. Semantics is one of the sub-fields of
15 linguistics.

16 Q Sub-field. What is semantics?

17 A Semantics is the study of the directly asserted or
18 the meaning attached directly to the words, sentences or
19 phrases that are used, so the literal or the obligatory
20 meaning associated with the words, phrases and sentences.

21 Q And in contra-distinction I just want to -- my
22 purpose here is to go over certain terms, what lawyers call
23 terms of art that you're going to refer to later on.

24 A Of course.

25 Q Is there a concept known as pragmatics within the

1 discipline of linguistics?

2 A Yes. Pragmatics is a related field to semantics.

3 Q What is it?

4 A It is context-dependent meaning. So while semantics
5 deals with the literal interpretation of words, sentences and
6 phrases, pragmatics deals with the knowledge we bring in from
7 the world, so general principles of life that we know, such as
8 the sun rises and sets and things like that. But importantly
9 also, the things that have been stated in a previous discourse
10 to which we were all participants. So if we're in a
11 conversation I understand things that were prior in the
12 conversation also are important to interpret ongoing
13 conversation, and that's what pragmatics looks at.

14 Q Whereas semantics is the language, the obligatory
15 interpretation of the language based on the words actually
16 used?

17 A Yes. I'm happy to give an example if that would
18 help.

19 Q What is an assertion in your discipline?

20 (Cell phone rings)

21 THE COURT: Can we turn them on silent?

22 THE WITNESS: That's a good example of an assertion.
23 An assertion is what we directly state by the words that we
24 utter. So the meaning that's directly attached to the words
25 and what those communicate to a listener with nothing else

1 added. So what we are directly stating about the world by
2 uttering a sentence.

3 BY MR. SAVARESE:

4 Q Is there a concept known as common ground?

5 A There is. Common ground is the shared knowledge
6 that we build up as participants in a conversation and we rely
7 on it for interpretation.

8 Q What is a set?

9 A A set -- well, there's a whole theory of what's
10 called set denotation and whenever we use a noun phrase in
11 natural language, we denote a set of entities in the real
12 world that are referred to by that noun phrase. Those are
13 called the extensions or the reference. So if I say those
14 dogs are hungry, the set or the context set denoted by that
15 noun phrase is in a universe of discourse to which we would
16 have established with a common ground. There is a set of dogs
17 to which I could look for to satisfy that set.

18 Q ow, among sets are there closed and open sets?

19 A Yes, there are. Most noun phrases denote a
20 restricted set, so they tell us where to look in the world for
21 possible entities, but we have things called quantifiers that
22 can operate over those sets, which are additional words or
23 lexical items that introduce that noun phrase typically that
24 tell us whether it is a universal set, meaning any possible
25 referent can exist that would satisfy that set, or if it is a

1 very semantically restricted set so that only one member of
2 the set can be satisfied or there's a certain range of
3 entities which can enter in that set. In addition, the noun
4 phrase itself will tell us how big that set can be, when
5 coupled with the common ground.

6 MR. SAVARESE: Now, sir, if I may ask you to bring
7 up onto the screen NRS 453D.200, subsection 1, if you would.

8 THE COURT: And if you would prefer to look in a
9 book, I can hand you the volume that it's in the pocket part,
10 or you can look at the screen.

11 THE WITNESS: I brought my own.

12 THE COURT: Okay.

13 THE WITNESS: I had requested specifically that I
14 would have a set in case I couldn't read your screen.

15 THE COURT: So I'm looking at my own as well, so.

16 THE WITNESS: Okay.

17 MR. SAVARESE: And this language continues on to the
18 next page. There you go. Let's -- what I'm interested in --

19 THE COURT: Subparts (a) through (m).

20 MR. SAVARESE: Yes. Subparts (a) through (m).

21 BY MR. SAVARESE:

22 Q Now, let's, if you would, take a look at the
23 prefatory language in subsection 1 and read that, if you
24 would, in conjunction with subsection (b). So that would be
25 1(b) --

1 A Okay.

2 Q -- reading that together.

3 A Certainly.

4 Q 1. "Not later than January 1st, 2018, the Department
5 shall adopt all regulations necessary or convenient to carry
6 out the provisions of this chapter. The regulations must not
7 prohibit the operation of marijuana establishments, either
8 expressly or through regulations that make their operation
9 unreasonably impracticable. The regulations shall include:
10 (a)" --

11 Q No, (b). Just go right to (b).

12 A Oh, sorry. "(b) Qualifications for licensure that
13 are directly and demonstrably related to the operation of a
14 marijuana establishment."

15 Q Okay. Now I want to discuss with you a little bit
16 that provision.

17 A Okay.

18 Q Firstly, the use of the word shall, what is the --
19 in your discipline is there a concept known as the Deontic,
20 D-e-o-n-t-I-c modal, m-o-d-al? And if so, what is it?

21 A Yes. Shall belongs to a class of verbs known as
22 modal verbs and there are different types of modal verbs in
23 terms of how they contribute to the meaning of the sentence in
24 which they appear. Deontic modals are modals that express
25 obligation or necessity on the part of a deontic source or the

1 issuer of the obligation to the participant to which it is
2 directed.

3 There are different types of deontic modals. There
4 are deontic modals such as shall or must that express strong
5 necessity, meaning they are obligatory and necessary and they
6 must be done. Or there are deontic modals that express what
7 we call weak necessity and this would be something like may or
8 can that express permissibility but not a requirement. In
9 this case shall is a deontic modal with strong necessity
10 deontic force. So it obligates or necessitates that the
11 listener or the hearer or the recipient in this case must do
12 the action described by the modal.

13 Q And in this example what is your interpretation is
14 the assertion made here?

15 MR. KOCH: Your Honor, objection. I believe a
16 written objection has already been filed to this witness'
17 testimony regarding interpretation of the statute. That's the
18 judge's job. For the record I make the objection. I think
19 the testimony is not relevant because it is providing an
20 expert opinion on the state of law. I expect I know how this
21 Court will rule, but I'm making the objection for the record.

22 THE COURT: Overruled. It's interesting to hear the
23 difference between shall or may.

24 Okay, let's keep going.

25 //

1 BY MR. SAVARESE:

2 Q Is this an example of an assertion, 1(b)?

3 A Yes. It asserts that -- basically what it directly
4 states, that a regulation shall include or be comprised of
5 qualifications -- too bad I didn't bring my glasses --
6 qualifications for licensure that are directly and
7 demonstrably related to the operation of a marijuana
8 establishment. That is the direct assertion of that phrase.

9 Q And the set here would be qualifications for
10 licensure?

11 A There is a restricted set identified by the noun
12 phrase that is qualifications for licensure is directly and
13 demonstrably related to the operation of a marijuana
14 establishment. That consists of the set in the real world
15 that we should identify through this noun phrase. And by
16 explicitly stating these are the qualifications in this
17 particular case, it also constrains us not to look at any
18 other qualifications beyond this set.

19 Q So this is an example of a closed or limited set?

20 A Right. Yes, it's a restricted set. Correct.

21 Q And does the statute, anywhere that you have
22 observed, self-define what directly and demonstrably related
23 to the operation of a marijuana establishment means?

24 A No. There is no explicit --

25 Q Do you have an opinion as to its linguistic meaning

1 of the words "directly and demonstrably related"?

2 A Certainly. They have a conventional meaning, as
3 most words do, and usually if we don't separately define or
4 explain our meaning, we would assume as listeners in order to
5 communicate that, the conventional meaning associated with
6 those words would be the one to interpret. Directly would
7 simply mean something like without intervening factors.
8 Demonstrably would be something exhibiting or showing.

9 Q You have described this as a -- I forget the word
10 you used, but is this merely illustrative or is this what you
11 would call inclusive or exclusive?

12 A The reading of --

13 MS. SHELL: I'm just going to object because it
14 calls for a legal conclusion, Your Honor.

15 THE COURT: Overruled. You can answer.

16 THE WITNESS: Thank you, Your Honor. Yes, well, if
17 you look at -- so it's really important here that we
18 understand the common ground in part of our interpretation,
19 which is why assertions in the common ground interact in
20 important ways. But if you take together the regulations
21 shall include and then (a) through (m), but particularly
22 focusing on (b), qualifications for licensure directly and
23 demonstrably related to the operation of a marijuana
24 establishment -- I'm going to be able to say that in my sleep
25 -- you have to -- we have to look at what's directly and

1 explicitly stated semantically to get the meaning. And so
2 that explicitly asserts that the regulations shall include
3 this specific set of qualifications.

4 If there was any other meaning intended, and
5 especially in the context of a statute, which as I understand
6 it is sort of the basis for all other subsequent regulations
7 that will ensue, we would have to state specifically with a
8 semantic marker of a different type any other interpretation
9 of include that we would intend. So, for example, I would
10 need some sort of syntactic or adverbial attachment to the
11 verb include that would say something like shall include but
12 is not limited to or shall minimally include or shall at least
13 include. Otherwise we would assume the conventional meaning
14 of the verb include operates here and that would limit us to
15 the procedures, qualifications and regulations stated in (a)
16 through (m).

17 BY MR. SAVARESE:

18 Q And here we're dealing with (b).

19 A Here we're dealing with (b), yes, so the
20 qualifications.

21 Q And so you're saying, then, that the semantic or
22 obligatory interpretation of this language is that all
23 qualifications must share this characteristic that they are
24 directly and demonstrably related?

25 A According to the semantic interpretation of this

1 language, yes.

2 Q Now, you -- is there -- okay, you just explained why
3 this is not merely an illustration of what may be included.
4 You have referred to the use of the word include in doing so.
5 Why is it that the use of the word include, as it is used
6 here, is not merely permissive or illustrative?

7 A Well, it's not permissive because of the shall,
8 which is a deontic modal expressing strong necessity. That is
9 the interpretation of shall. That's obligatory linguistically
10 because there are other options that we could have used for
11 permissibility. But the include here doesn't include any
12 semantic marking and the common ground that has been
13 established in other areas of the statute shows that when
14 other interpretations of include were intended or when minimal
15 assertions of a verb, for example, were intended, there is
16 syntactically and semantically marking information that draws
17 our attention to that alternative interpretation that was
18 intended, which is not present here.

19 Q But which is present elsewhere within this same
20 statute, chapter of the Nevada Revised Statutes?

21 A Yes. The common ground does establish some other
22 semantic marking in different contexts that would lead us to
23 different interpretations of verbs in those cases that is
24 absent in this case.

25 MR. SAVARESE: Sir, may I have 453D.030.

1 THE COURT: That's the definition section.

2 MR. SAVARESE: That's correct. Subsection 13, if you
3 would.

4 BY MR. SAVARESE:

5 Q And we have a definition of marijuana products. Can
6 you read that to us for the record?

7 A Item 13. "Marijuana products means products
8 comprised of marijuana or concentrated marijuana and other
9 ingredients that are intended for use or consumption, such as,
10 but not limited to, edible products, ointments and tinctures."

11 Q Is that an example of the use of the quantifier?

12 A This -- No, there's no quantifier here.

13 Q No, I mean --

14 A However, it's an example of the use of semantically
15 marking language that qualifies how we should read "such as"
16 in this case.

17 Q Okay. So in this use of the word include, the
18 Legislature has specifically expressed --

19 THE COURT: Counsel, this isn't the legislature,
20 this is Question 2, it's the ballot initiative. Right?

21 MR. SAVARESE: I'm sorry, Your Honor?

22 THE COURT: Isn't this the ballot initiative?

23 MR. SAVERESE: This is the NRS provision.

24 BY MR. SAVERESE:

25 Q That language, "such as, but not limited to," is

1 that to be contrasted for purposes of a linguistic analysis
2 with the mere use of the word shall include?

3 A Yes. This contributes to the common ground that in
4 this case there are other semantic qualifiers that directly
5 and explicitly suggest how we should take the interpretation
6 of "such as." But there are also cases further in the statute
7 that use actually the verb include with similar explicit
8 semantic marking.

9 MR. SAVERESE: May I have 310, subsection 3(b)?
10 453D.310, subsection 3(b).

11 THE COURT: And counsel, this is not from the ballot
12 initiative and it doesn't become effective until next January,
13 this portion of the statute.

14 MR. SAVARESE: Well, this --

15 THE COURT: I understand, but it's not part of the
16 same package of drafting that occurred.

17 MR. SAVARESE: It's verbatim from the ballot
18 initiative.

19 THE COURT: Not so much.

20 MR. SAVARESE: Well, I'm not --

21 THE COURT: But that's okay. From a linguistic
22 standpoint I'm happy to listen to --

23 MR. SAVARESE: Okay.

24 THE COURT: -- why the words at a minimum, including
25 but not limited to, and those kind of things are important in

1 my decision as to how to interpret something. But you are now
2 looking at a statute that has multiple tractors because parts
3 were added by the Legislature but are not effective yet.

4 MR. SAVARESE: I understand, Your Honor.

5 THE COURT: Okay.

6 MR. SAVARESE: I'm just going to point to these few
7 examples which I think are present elsewhere as well.

8 BY MR. SAVARESE:

9 Q With respect to .310 3(b), would you read that for
10 us, please?

11 A Item 3. "A marijuana product manufacturing facility
12 shall not produce marijuana products in any form that: (b)
13 Bears the likeness or contains characteristics of a real or
14 fictional person, animal or fruit, including, without
15 limitation, a caricature, cartoon or artistic rendering."

16 MR. SAVARESE: And then if you would -- may we have
17 the same section .310, 4(b).

18 BY MR. SAVARESE:

19 Q So would you read that for us, please.

20 A 4. "A marijuana product manufacturing facility
21 shall: Affix a label to each marijuana product intended for
22 human consumption by oral ingestion which includes, without
23 limitation, in a manner which must not mislead consumers, the
24 following information."

25 Q That's sufficient. Again, that would be the use of

1 the additional language to indicate that the list provided or
2 the qualification of the description is not intended to be
3 exhaustive, it is illustrative --

4 A Yes.

5 Q -- is that correct?

6 A Yes. From the perspective -- a linguistic
7 perspective, if we're going to get away from semantic meaning,
8 then it requires we make assumptions and inference, so we tend
9 to try to avoid that where possible by explicitly semantically
10 marking what interpretation is intended. And particularly
11 when there's a common ground, meaning that in other parts of
12 our conversation or here in this case it would be a text, we
13 do explicitly semantically denote any unusual or atypical or
14 specific kind of reading that we want to get, then it sets up
15 a contrast with areas where we don't do it where we should
16 just assume that the conventional meaning should be
17 interpreted in that case.

18 Q Let's take a look at .310, subsection 5. Would you
19 read that for us?

20 A "A retail marijuana store or marijuana product
21 manufacturing facility shall not engage in advertising that in
22 any way makes marijuana or marijuana products appeal to
23 children, including, without limitation, advertising which
24 uses an image of a cartoon character, mascot, action figure,
25 balloon, fruit or toy."

1 Q Thank you. Again, we have the addition of "without
2 limitation" in this statutory scheme?

3 A Yes. Here again we see some specific semantic
4 marking of an alternative reading that's intended.

5 Q What would the alternative meaning be when you have
6 -- that you're referring to?

7 A In this case, you mean?

8 Q Yes.

9 A It's saying that it's not limited to these items,
10 but any of those items.

11 Q And as to .200, a contra-distinction, .200 sub 1,
12 "The regulation shall include: (b) Qualifications for
13 licensure that are directly and demonstrably related to the
14 operation of a marijuana establishment," is that -- so your
15 testimony is that that is not similarly limited illustrative,
16 it limits all -- qualifications must be directly and
17 demonstrably related?

18 A From a semantic standpoint there is no additional
19 semantic explication of any other reading in this case.

20 THE COURT: So can I cut to the chase? So in your
21 opinion if the drafters had intended that there be other
22 qualifications considered, they could have included language
23 like but not limited to, at a minimum or without limitation?

24 THE WITNESS: Correct.

25 THE COURT: And they didn't?

1 THE WITNESS: And they didn't. And so --

2 THE COURT: So you have an opinion based upon them
3 not including that additional phrase?

4 THE WITNESS: Correct. Correct.

5 THE COURT: Okay.

6 THE WITNESS: Correct.

7 BY MR. SAVARESE:

8 Q Let's turn, if we may, to the regulation, NAC 453D
9 and specifically I will direct your attention to Section 272
10 of that regulation. Now, here we have the Department of
11 Taxation's regulation wherein qualifications or rankings of
12 applications are set forth.

13 A Yes.

14 Q You will note that in subsection 1, (a) through (I)
15 those are listed. Now, in terms of semantic principles,
16 meaning the obligatory meaning of these terms and phrases, if
17 we go to sub 1, sub (a), "Whether the owners, officers or
18 board members have experience operating another kind of
19 business that has given them experience which is applicable to
20 the operation of a marijuana establishment." Is that right,
21 did I read that correctly?

22 A Yes.

23 Q Did I?

24 A As far as I can tell, yes.

25 Q Okay. Now, is there any semantic evidence there of

1 that this is a criteria which directly and demonstrably
2 relates to the operation of a marijuana establishment?

3 A Yes. Such a relationship is semantically explicated
4 in (a).

5 Q And how so?

6 A It says explicitly by its assertion that whether
7 they have experience operating another kind of business that
8 has given them experience that is applicable to the operation
9 of a marijuana establishment, thereby establishing a direct
10 and demonstrable link semantically.

11 Q Let's go to (b). "The diversity of the owners,
12 officers or board members of the proposed marijuana
13 establishment." Did I read that correctly?

14 A Yes, you did.

15 Q Is there any --

16 MR. GENTILE: Can the record reflect specifically
17 what regulation is being read right now, please.

18 THE COURT: NAC 473D.272. Correct?

19 MR. SAVARESE: That's correct.

20 THE COURT: I can tell because it was up on the
21 screen.

22 BY MR. SAVARESE:

23 Q How about that criterion, is there anything -- is
24 there semantic evidence that that -- to support the notion
25 that that criteria is directly and demonstrably related to the

1 operation of a marijuana establishment?

2 A There is no semantic assertion in (b) of any direct
3 and demonstrable link, or any link to anything doing -- within
4 the operation of a marijuana establishment as far as I can
5 see.

6 Q Let's go to (c). "The educational achievements of
7 the owners, officers or board members of the proposed
8 marijuana establishment." Is there any semantic evidence in
9 that assertion that would bring that criterion within the
10 scope of that which is directly and demonstrably related to
11 the operation of a marijuana establishment?

12 A No, there's no semantic explication in that case,
13 either.

14 Q How about subsection (d): "The financial plan and
15 resources of the applicant, both liquid and illiquid," is
16 there any semantic evidence --

17 A There's not anything semantically denoted in that
18 phrase.

19 Q -- linking that to the requirement of directly and
20 demonstrably related to a marijuana establishment?

21 A No.

22 Q How about (e): "Whether the applicant has an
23 adequate integrated plan for the care, quality and safekeeping
24 of marijuana from seed to sale," is there evidence, semantic
25 evidence there that is by contrast directly and demonstrably

1 related to the operation of a marijuana establishment?

2 A Yes. It explicitly states the relationship to a
3 marijuana business, or from seed to sale.

4 Q Now let's go to (f): "The amount of taxes paid and
5 other beneficial financial contributions, including, without
6 limitation," -- again, just before I go further, in this
7 instance the Department is using the limiting phrase -- excuse
8 me, using the "without limitation" concept we discussed
9 earlier, in conjunction with the word "including."

10 A Yes, they are.

11 Q "The amount of taxes paid and other beneficial
12 financial contributions, including, without limitation,
13 civic or philanthropic involvement with this State or its
14 political subdivisions by the applicant or the owners,
15 officers or board members of the proposed marijuana
16 establishment." Did I read that correctly?

17 A Yes, you did.

18 Q Is there any semantic evidence in that assertion,
19 in that statement that would indicate that that is within the
20 scope of that which is directly and demonstrably related to
21 the operation of a marijuana establishment?

22 A There is no linguistic expression in this item,
23 either, that would entail a relationship to a marijuana
24 operation.

25 Q There's only a couple more left. We've got (g) now.

1 "Whether the owners, officers or board members of the proposed
2 marijuana establishment have direct experience with the
3 operation of a medical marijuana establishment or marijuana
4 establishment in this State and have demonstrated a record of
5 operating such an establishment in compliance with the laws
6 and regulations of this State for an adequate period of time
7 to demonstrate success." Now, by contrast does that criterion
8 -- is that criterion within the scope of that which is
9 directly and demonstrably related to the operation of a
10 marijuana establishment by application of semantic principles?

11 A I think this item could be the poster child for
12 semantic explication, in fact, of that.

13 Q Okay. So this is clearly --

14 A Yes.

15 Q -- within the scope of that which is directly and
16 demonstrably related?

17 A There's no ambiguity here about the relationship.
18 Correct.

19 Q (h): "The experience of key personnel that the
20 applicant intends to employ in operating the type of marijuana
21 establishment for which the applicant seeks a license." Is
22 there anything there semantically that brings that within the
23 scope?

24 A There's no semantic explication of how this relates
25 directly and demonstrably to the operation of a marijuana

1 business per se, no.

2 Q And why is that, with respect to the use of the word
3 "experience"?

4 A Because it doesn't specify an experience directly and
5 demonstrably related to the operation of a marijuana business,
6 just experience in general. That's at least what's
7 semantically entailed there.

8 Q Whereas the previous provision or (g) talks about
9 experience in the operation of a medical marijuana or other
10 marijuana establishment?

11 A Correct. So it actually entails or semantically
12 requires that the experience be relevant to a marijuana
13 business, which is what --

14 Q And finally subsection (I) at long last, finally:
15 "Any other criteria that the Department determines to be
16 relevant." Now, how about that one, is there anything there
17 that would semantically indicate that's within the scope --

18 A No.

19 Q -- of that which is directly and demonstrably
20 related?

21 A No. In particular (I) does not show any semantic
22 direct and demonstrable relationship that's asserted. And in
23 addition, it also identifies a new set, a set by the noun
24 phrase "any other criteria that the Department determines to
25 be relevant."

1 Q What's the effect of the use of the word "any"?

2 A Any is what we call a quantifier in linguistics,
3 which is a linguistic expression that tell us how to look at
4 the range of entities in a set that would satisfy the
5 proposition expressed. In plain language what that means is
6 it tells us when we have a set of items that a phrase denotes
7 or tells us about, the quantifier tells us how many of those
8 items should be possibly identified in the world as
9 potentially satisfying that set.

10 Q Is that what you would call an open set?

11 A Well, yes, it is an open set because there's no
12 semantic explication anywhere in the text of which criteria
13 the Department would determine to be relevant. In that way
14 it's a very unrestricted set, but it is a set that's denoted
15 but an unrestricted set because we don't have a universe of
16 discourse that is set up by the regulations that tells us
17 where to look for the denotation of the members of that set.

18 Q So then would I be correct in saying that it cannot
19 be semantically delimited to the category of that which is
20 directly and demonstrably related to the operation of a
21 marijuana establishment?

22 A That could be a subset of this set, but by logical
23 necessity there would be other members of the set that could
24 also be included that would not be directly and demonstrably
25 related to the operation of a marijuana establishment.

1 Q All right. Now, if we go up to the prefatory
2 language before the list we've gone through and just under
3 subsection 1 itself before we get to (a), let me read that and
4 tell me if I'm reading correctly again here. "If the
5 Department receives more than one application for a license
6 for a retail marijuana store in response to a request for
7 applications made pursuant to NAC 453D.260, and the Department
8 determines that more than one of the applications is complete
9 and in compliance with this chapter -- with this chapter and
10 Chapter 453D of NRS, the Department will rank the applications
11 within each applicable locality for any applicant which are in
12 a jurisdiction that limits the number of retail marijuana
13 stores, in order from first to last based on compliance with
14 the provisions of this chapter and Chapter 453D of NRS and on
15 the content of the applications relating to." And then the
16 list appears. Did I read that correctly?

17 A Yes, you did.

18 Q Now, does that prefatory language serve to limit the
19 list semantically to that which is directly and demonstrably
20 related within the meaning of the NRS provision?

21 A It actually delimits a number of different items
22 that is inclusive of the Chapter 453D of NRS, which I believe
23 is what you refer to as the statute, correct?

24 Q Yes.

25 A But it also says it is subject to this chapter,

1 which includes criteria that are both directly and
2 demonstrably related and those that are not and thereby does
3 not delimit the set to those directly and demonstrably
4 applicable to the operation of a marijuana business.

5 Q So to that extent, then, it's circular in its logic?

6 A It's circular in its reference set. Correct.

7 Q So because it is -- the interpretation of these
8 listed numerated items is subject to compliance with this
9 chapter, that language making it subject to compliance with
10 this chapter does not serve to limit the possible scope of
11 these items, these criteria, to that which is confined to
12 those which are directly and demonstrably related?

13 A That's correct.

14 Q Now, did you also have an opportunity to take a look
15 at the application itself?

16 A I did. I reviewed it.

17 Q Just a blank one?

18 A A blank one. Yes, a blank application.

19 Q A blank application. Section 6.3 of that provision
20 -- excuse me, of the application. Okay. Let me read that and
21 tell me -- I'm almost done, Your Honor. "Applications that
22 have not demonstrated a sufficient response related to the
23 criteria set forth above will not have additional criteria
24 considered in determining whether to issue a license and will
25 not move forward in the application process." Is that what

1 that section says?

2 A It looks like it to me, yes.

3 Q Okay. Now, the use of the phrase "additional
4 criteria," is that an open set?

5 A Well, that denotes a set, certainly. This one is a
6 little different because it has something called a negative
7 logical operator on this sentence.

8 Q It's stated in the negative?

9 A Yes, which negates the assertion of the sentence in
10 this case. And in addition it identifies a set that is
11 restricted to additional criteria.

12 Q And would that have a positive corollary?

13 A Well, certainly. As they say, every negative has a
14 positive, and that is true in linguistics as well. It would
15 be considered the semantic contradiction of this phrase. So
16 every assertion has a contradiction which is the negative of
17 that assertion. And this is the negative of the assertion;
18 therefore the assertion could be positive that applications
19 which had demonstrated a sufficient response related to the
20 criteria set forth above, which was the criteria we were
21 previously discussing, will have additional criteria
22 considered in determining whether to issue a license and will
23 move forward in the application process. So that would be the
24 positive assertion if you remove the negative operators which
25 form the contradiction of this semantic sentence.

1 Q And is there any semantic limitation here on the
2 scope of what additional criteria means?

3 A There is nothing semantically stated that would
4 narrow the set of this criteria in the ways that the other
5 sets were narrowed, so this one is a completely open and
6 unrestricted set, that as long as it is a criteria it would
7 have to be an identified criteria. That's the only
8 restriction on this set.

9 Q Is there anything in this language, this section
10 that would entitle the reader to apprehend what the additional
11 criteria referred to are or may be?

12 A There was nothing set up in what we call the
13 universe of discourse, which is the set of entities or objects
14 referred to in a text or a discourse. That would delimit this
15 in a way that -- beyond that criteria that I should look for
16 as a member of this set.

17 Q All right. Doctor, I want to go back, just a last
18 question for you, my last subject for you would be back to NRS
19 section, chapter, and that would be 453D.200, subsection 6.
20 Do you see that?

21 A Subsection 6, you said?

22 Q Yes.

23 A Yes.

24 Q I'm going to read that and tell me if I'm correct.
25 "The Department shall conduct a background check of each

1 prospective owner, officer and board member of a marijuana
2 establishment license applicant." Did I read that correctly?

3 A Yes, you did.

4 Q Now, again we have -- they use the word "shall,"
5 which is the deontic modal, as you described it?

6 A Correct.

7 Q Making it a mandatory or the highest degree of
8 obligatory interpretation?

9 A Correct. Strong necessity.

10 Q Must be done or action required; right?

11 A Yes. We call it strong necessity.

12 Q And do you have an opinion, based upon the context
13 or the pragmatics and semantics or whatever you'd like to draw
14 from in your opinion as to what the word "each" means in this
15 provision?

16 A Well, each is a quantifier, much like any, and it
17 allows us to understand to which members of a set a predicate
18 or an assertion will apply. And each has a distributional
19 property in addition to its sense of every which requires that
20 whatever is predicated to occur or the verb in question, the
21 action described, must apply to every individual member of the
22 set. So it can't just be some members of the set. So if I
23 said some owner that would be any number less than 50 percent.
24 If I said most owners, that would be any number over 50
25 percent. But if I say each, that requires that every

1 individual of the set must have the same predication occur to
2 it, which here is the background check because it's the
3 syntactic -- it's the prepositional phrase that modifies
4 background check syntactically.

5 MR. SAVARESE: Your Honor, may I consult my
6 colleagues before closing?

7 THE COURT: You may consult with your colleagues.

8 MR. SAVARESE: No further questions, Your Honor.

9 THE COURT: Any of the other plaintiffs have any
10 questions?

11 UNIDENTIFIED SPEAKER: No, Your Honor.

12 THE COURT: The State? Mr. Shevorski.

13 MR. SHEVORSKI: Thank you, Your Honor.

14 CROSS-EXAMINATION

15 BY MR. SHEVORSKI:

16 Q Dr. Fridland -- Fridland?

17 A Fridland. Yes.

18 Q Fridland. I apologize.

19 A No worries. Thank you.

20 Q My name is Steven Shevorski. I work for the Office
21 of the Attorney General. It's a pleasure to meet you. Do you
22 have an estimate about how long you just testified for?

23 A No, I don't. Maybe 30 minutes.

24 Q Maybe 30 minutes about the meaning of a particular
25 statute and various -- actually various parts of statutes and

1 regulations. And you used some terms, pragmatics, semantics,
2 common ground as part of your testimony; correct?

3 A Yes.

4 Q And you were giving a linguistic opinion about the
5 meaning of words in the statute; correct?

6 A Correct. A linguistic analysis.

7 Q Linguistic -- thank you. Linguistic analysis. So
8 you'd have to agree with me, would you not, that the statute
9 you're interpreting is ambiguous, because otherwise we
10 certainly wouldn't need a linguistic analysis to explicate it?

11 A Yes, I think it would depend. I'm giving testimony
12 as to the semantic or obligatory meaning. Whether you have
13 inferences that are in disagreement with the semantic meaning
14 is what would give rise to ambiguity.

15 Q And the common ground that we're in today, this is a
16 court.

17 A Correct.

18 Q And we have a judge to interpret the law, the
19 unambiguous law. We have experts to assist triers of fact.
20 And I assume you're not withdrawing your opinion. You're an
21 expert giving opinion on facts, you're not giving an opinion
22 of law?

23 A Correct. I'm giving a linguistic opinion.

24 Q And so you'd have to agree with me that there's a
25 question of fact about the meaning of these words you've just

1 interpreted; otherwise you'd be doing the job of the judge;
2 right?

3 A Correct. There's certainly obviously some
4 disagreement or no one would be here.

5 THE COURT: And there's lots of people here.

6 THE WITNESS: There definitely are.

7 BY MR. SHEVORSKI:

8 Q Now, you prepared a report in this matter?

9 A I did.

10 Q Before your testimony today, did you review that
11 report?

12 A I did.

13 Q It says, "For my analysis I was asked to consider
14 the language of 453D.210 and the language of regulation
15 453D.272." Did I read that correctly?

16 A Yes, I would imagine so.

17 Q And you have to agree with me that that's a mistake;
18 right, because your comparison is NRS 453D.200 1(b) with the
19 regulation 453D.272?

20 A Well, I think I looked at that section most
21 specifically, but I did read the entire statute and I looked
22 at common ground elsewhere in the statute, so I think it does
23 encompass it. But certainly I think those were the relevant
24 sections in particular that I reviewed, yes.

25 Q 453D.200, not .210?

1 A Probably not. I'm not that familiar with all the
2 numbers, but .200 1(b), which is what I just discussed is what
3 I spent the most time on, yes.

4 Q Okay. Now, ambiguous language -- so we're talking
5 about the common ground here when we're in this courtroom.
6 Who is entitled to great deference with respect to their
7 opinion of the statute in an instance where it's not a pure
8 issue of law?

9 A I'm not sure exactly. Are you talking about in this
10 -- in the context of the courtroom or in the context --

11 Q In the -- we're in the courtroom. You're giving an
12 opinion on the meaning of a statute?

13 A Yes.

14 Q And you've testified that there's a dispute about
15 the meaning of the statute and you're giving a linguistic
16 opinion on one side of that dispute?

17 A Right.

18 Q Amongst the players here, whether it be the
19 plaintiffs who have hired you, the State who drafted the
20 regulations --

21 A Correct.

22 Q -- who is entitled to great deference about their
23 opinion of the statute?

24 A Well, I'm just asked to consult on linguistic
25 matters. I would assume that is the matter of the court and

1 the judge to determine the outcome of this case.

2 Q So with respect to the meaning of NRS 453D.200 1(b),
3 would you agree with me that it's the State who is entitled to
4 great deference as to its interpretation of that statute?

5 A I --

6 MR. SAVARESE: Objection, Your Honor, that's a legal
7 conclusion.

8 THE COURT: Overruled. You can answer if you can.
9 If you don't know the answer, that's okay, just tell us.

10 THE WITNESS: I'm not exactly sure what you mean,
11 since I am not usually in legal matters. In terms of
12 interpretation it's the reader, generally, who has the right
13 of interpretation, and we must rely on semantic entailments,
14 things that are obligatorily there. And then we have to rely
15 on reasonable common ground inference. We can't just
16 arbitrarily decide what things mean, no matter who we are.
17 But I don't know exactly in terms of the question you're
18 asking. I'm really not sure how to answer that. But I guess
19 there probably is some requirement of somebody specific
20 interpreting this. I just don't know it because I'm not a
21 lawyer. Thank goodness.

22 Q Well, you know what Shakespeare said?

23 A Many things.

24 Q He wasn't a fan.

25 THE COURT: That was satire in that part, if you

1 read the whole play.

2 MR. SHEVORSKI: I'm aware, Your Honor.

3 THE COURT: All right. I'll make you do Shakespeare
4 in the law if you don't get it.

5 MR. SHEVORSKI: Please don't.

6 BY MR. SHEVORSKI:

7 Q Okay. Do you still have -- did you bring your book
8 with various statutes with you and do you still have it in
9 front of you?

10 A I do, yes, with the regulation and the statute I
11 think it includes.

12 Q Do you have NRS 453D.200?

13 A Yes. That was the one we were talking about
14 previously, I believe, was it not?

15 THE COURT: It is.

16 THE WITNESS: Two zero zero. Yes.

17 THE COURT: With subparts (a) through (m).

18 THE WITNESS: Got it.

19 MR. SHEVORSKI: Thank you, Your Honor.

20 BY MR. SHEVORSKI:

21 Q As part of your opinion today, did you read the
22 preamble to the statute?

23 A That would be the duties of the Department section,
24 the black -- the dark?

25 Q Right. The one in black.

1 A Yes.

2 Q And I'll read it for you. "Duties of Department
3 relating to regulation and licensing of marijuana
4 establishments." And there's a semicolon. "Information about
5 consumers. Period. And then sort of a parenthetical: "This
6 section was proposed by an initiative petition and approved by
7 the voters at the 2016 general election and therefore is not
8 subject to legislative amendment or repeal until after
9 November 22, 2019.)"

10 A Yes.

11 Q Did I read that correctly?

12 A I think you did.

13 Q Okay.

14 A Nice job.

15 Q With respect to the phrase, "initiative petition,"
16 how did that affect your opinion with respect to the meaning
17 of NRS 453D.200 1(b)?

18 A Well, because this is actually bracketed, it gives
19 the impression that it is not part of the semantic material
20 that would be read by the reader. However, an initiative
21 petition would be interpreted as the petition that has begun
22 this process, I would imagine, although, again, I'm not a
23 legal expert. That would be the conventional meaning
24 associated with those terms.

25 Q The fact that this law was proposed as an

1 initiative, did that affect your analysis as to the meaning,
2 or how we should approach the meaning, rather, of NRS 453D.200
3 1(b)?

4 A No, it didn't affect my analysis. I analyzed this
5 from a semantic perspective of what was directly attached to
6 the meaning of the words.

7 Q Now, previously you talked about the statute dealing
8 with definitions, correct? And that's NRS 453D.030.

9 A I think just in terms of it providing an example of
10 semantic qualification.

11 Q Can you turn to subpart 15, please?

12 A Oh, is that item 15 in that section?

13 Q Yes. I'm sorry. Are you there?

14 A Yes.

15 Q Can you read that out loud, please?

16 A 15. "Marijuana testing facility means an entity
17 licensed to test marijuana and marijuana products, including
18 for potency and contaminants."

19 Q It uses the word "including" there, doesn't it?

20 A Yes, it does.

21 Q Okay. It's not your position that a marijuana
22 testing facility can only test for potency and contamination
23 is it?

24 A Honestly, I don't have any clue about what a
25 marijuana testing facility would test for, and so I don't know

1 what other things would be necessary to test for, just because
2 I'm not familiar with it.

3 Q And it uses the word "including"?

4 A It does.

5 Q Is there any -- strike that. Would you please turn
6 to Exhibit 2009? And they're in the black binders.

7 MR. SHEVORSKI: May I approach, Your Honor?

8 THE COURT: You may.

9 THE CLERK: It's in the cart -- [inaudible].

10 MR. SHEVORSKI: Thank you.

11 THE COURT: And it's in the second black binder. It
12 should be the first document.

13 THE WITNESS: Okay, thank you.

14 MR. SHEVORSKI: You're welcome.

15 THE WITNESS: 2009?

16 MR. SHEVORSKI: Yes. It's the first tab there.

17 BY MR. SHEVORSKI:

18 Q All right. Are you at 2009, Doctor?

19 A Yes.

20 Q And have you seen this document before?

21 A I have not.

22 Q This is not part of the material that my friend, Mr.
23 Savarese, asked you to review?

24 A No, it was not.

25 Q Can you go to page 2608, if you would be so kind?

1 A Two six --

2 THE COURT: It's almost at the end.

3 THE WITNESS: Almost there.

4 MR. SHEVORSKI: No, no rush.

5 THE WITNESS: Okay. I believe I'm there.

6 BY MR. SHEVORSKI:

7 Q Okay. And do you see who the -- where it says
8 Individual Sponsors?

9 A Yes.

10 Q And under -- so that's under part two there. I'll
11 call it part two. That's probably not part two, but I'll just
12 call it two. And it says, "John Ritter, Nevada Dispensary
13 Association and The Grove." Do you know who Mr. Ritter is?

14 A I don't. I'm sorry.

15 Q Were you in the courtroom when Mr. Ritter was
16 testifying earlier this week or Monday?

17 A No. I actually am from Reno. I'm just here --

18 Q Okay.

19 A -- hopefully short and sweet.

20 Q Understood. I'm doing my best. Can you look at
21 part three there where it says in bold, "Describe the
22 recommendation" and read that to yourself?

23 A Okay.

24 Q Have you finished?

25 A Yes. It was cursory reading.

1 Q What's your understanding of that paragraph?

2 A That essentially that these are criteria, the ones
3 listed below here, that they would like to have included in
4 the numerically scored bidding process, as well as the
5 qualifications for licensure directly and demonstrably related
6 to the operation of a marijuana establishment.

7 Q And I'll represent to you that Mr. Ritter has
8 testified here earlier and he is a representative of a company
9 called TGIG, also known as The Grove, and they are represented
10 by Mr. Gentile and Mr. Savarese. Now, if you look at subpart
11 -- so below that at part five it starts, "Owners, officers."

12 A Okay.

13 Q And it reads, "Owners, officers and/or board members
14 have a demonstrated track record of employing Nevadans and
15 paying state and local taxes and fees in Nevada. Heavily
16 weighted." Did I read that correctly?

17 A Yes.

18 Q Now let's look at part six. "Owners, officers and/or
19 board members have a demonstrated track record of giving back
20 to the community through their civic and/or philanthropic
21 involvement in Nevada. Heavily weighted." Did I read that
22 correctly?

23 A I believe so.

24 Q Is it your opinion that those two recommendations
25 would violate NRS 453D.200, subpart 1(b), the directly and

1 demonstrably category?

2 MR. SAVARESE: I'm going to object, Your Honor.
3 It's a legal conclusion.

4 THE COURT: Overruled. You can answer.

5 THE WITNESS: There is no semantic assertion in five
6 or six of that relationship. I don't know what it violates
7 because I'm not a lawyer, again, but five and six do not
8 semantically entail a relationship.

9 BY MR. SHEVORSKI:

10 Q So Mr. Ritter would disagree with you because he
11 recommended this; correct?

12 A I'm not sure if he'd disagree with me, but that's
13 the semantic analysis here.

14 Q From what this document says, it says he's one of
15 the sponsors of this particular criteria?

16 A Maybe. Yes, it does say that.

17 Q Let's go through a little bit of your background.

18 THE COURT: So I have to stop at noon because I have
19 a conference call in another case. I'm happy to start up
20 again at 1:00, but we're nine minutes from there, so I'm just
21 warning you.

22 MR. SHEVORSKI: I'll be quick, Your Honor.

23 THE COURT: Uh-huh.

24 MR. SHEVORSKI: Shevorski quick.

25 THE WITNESS: Are we done with this binder?

1 MR. SHEVORSKI: Yes.

2 THE WITNESS: Thank you.

3 BY MR. SHEVORSKI:

4 Q Have you ever published any books or papers on
5 linguistic approaches to interpreting legal text?

6 A I have published several articles on courtroom
7 testimony and how narrative structure can be altered by the
8 attorneys.

9 Q I appreciate that and I know about those
10 publications, but I'm asking about a linguistic approach to
11 legal texts?

12 A No, I have not.

13 Q Have you ever been qualified as an expert before on
14 offering an opinion to use a linguistic approach to a legal
15 text?

16 A No, I have not.

17 Q Have you ever read any books on approaches to
18 statutory construction?

19 A Have I -- I'm sorry?

20 Q Read any books on approaches to statutory
21 construction?

22 A No. Luckily, I have not.

23 Q Okay. Do you know who Fred Friendly is?

24 A I do not.

25 Q Bryan Garner?

1 A I do not.

2 Q Cass Sunstein?

3 A No.

4 Q Have you read a case where a judge has offered an
5 interpretation of a statutory text?

6 A No, I have not.

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

8 THE COURT: Any of the other defendants in
9 intervention have questions before I break for lunch in seven
10 minutes?

11 CROSS-EXAMINATION

12 BY MR. KOCH:

13 Q Ms. Fridland, thank you for your patience. I know
14 you've been here for a few days, so hopefully we'll let you
15 get out of here. Let me give you an example or a hypothetical.
16 You're working for the Encyclopedia Britannica and you show up
17 one day and the editor says this encyclopedia shall include
18 the names of all Nobel Prize winners. You come back, turn in
19 your encyclopedia and it has just the names of those Nobel
20 Prize winners. Have you completed that assignment?

21 A Yes, I would have completed it in that context. But
22 since pragmatics requires context dependent meaning, because I
23 understand what your question is, then that's a different
24 context, so different meanings would obtain in terms of the
25 interpretation.

1 Q So the context, you would believe that the
2 encyclopedia would include not only the names of Nobel Prize
3 winners but some other information; correct?

4 A Right, based on what an encyclopedia is defined as.

5 Q Right.

6 A And the common ground of knowledge about what an
7 encyclopedia requires. Then, yes, in that case I would have
8 the common ground to use to form an opinion on whether that
9 was complete.

10 Q You're a professor, you sometimes assign papers to
11 your students to write?

12 A Not just sometimes.

13 Q Often? Okay. You assign your students a paper and
14 you tell them your paper that you turn in must include
15 citations to any references that you read in preparation for
16 this paper. A student comes back to you and hands in just a
17 list of those citations. Would you give them an A+ on that
18 paper?

19 A Without the paper?

20 Q Right.

21 A Well, yes, again because of context I would know
22 that a paper also means that there is an analysis portion and
23 the citations are a section of that.

24 Q And if that student said, well, I didn't understand
25 it that way, my personal interpretation was different, what

1 would you have expected them to have done before they started
2 on that project?

3 A Have taken another course in their lifetime which
4 would have prepared them for going to college.

5 Q Yeah. And what if they had questions on
6 understanding exactly what you were referring to, would you
7 have expected them to ask those questions before they turned
8 in their paper?

9 A Yes. And I provide materials to all my students
10 that outline the sections of a paper and is taken as the
11 authority on how those papers should be written. It includes
12 both a section that's the analysis and a section on citations,
13 so it would be clear.

14 Q One last example. You referenced a section of the
15 statute that referred to the Department shall conduct a
16 background check. Do you remember that?

17 A I do.

18 Q If that statute had said shall conduct a background
19 check which shall include fingerprints of any owner, what
20 would you have understood that requirement to entail?

21 A That shall include fingerprints of --

22 Q Of any owner or applicant.

23 A Then it would require fingerprints of all of them.

24 Q Right. Would it require only fingerprints that
25 would be the background check?

1 A I'm sorry, say the sentence again.

2 Q If it said shall include fingerprints of any owner,
3 would you expect then that that statute would be anticipating
4 just the fingerprints to be turned in?

5 A As stated semantically, yes.

6 Q So nothing else besides fingerprints?

7 A Not if it's stated in that way.

8 Q And if the Department conducted a further background
9 check, would they be violating that statute?

10 A If it wasn't explicated elsewhere. I don't know
11 that much about how you construct statutes or what the
12 limitations are there, but in that specific case of the
13 assertion that you made, that assertion would only require
14 that they do the background check that includes the
15 fingerprints.

16 Q So a lot of other factors have to be taken into
17 account before you --

18 A The common ground.

19 Q The common ground.

20 A Yes.

21 Q Including other reports or prior information that
22 was promulgated maybe by a task force. Would that be one
23 thing to take into account in common ground?

24 A Well, again, as I think your colleague said, I don't
25 have any experience on statutory creation, so I don't know how

1 that works in terms of what can inform the common ground
2 beyond the statute. But from my perspective when you have a
3 statute, as reader of that statute I would not have access to
4 any of that other material and therefore would be constrained
5 to the statute interpretation itself. I would assume most
6 other readers coming to a statute would have that same
7 limitation unless they are lucky enough to be employed in the
8 legal field. But since most of us aren't, and that is who the
9 statutes are written by and for, then my assumption would be
10 they would be limited to only the interpretation there in the
11 text.

12 MR. KOCH: No further questions. I'll let the judge
13 get to her conference.

14 THE COURT: Any other defendants in intervention
15 have questions?

16 MR. HYMANSON: Briefly, Your Honor.

17 THE COURT: You're not a defendant -- oh, yeah, you
18 are. You're a plaintiff. You're a defendant, aren't you?
19 You're sitting next to Mr. Parker, but you are a defendant in
20 intervention, Mr. Hymanson. Can you do it in a minute or
21 less?

22 MR. HYMANSON: I can do it in under five questions,
23 Your Honor.

24 THE COURT: That's not a minute or less, Mr.
25 Hymanson.

1 Ma'am, I'm really sorry, but I have to break for
2 lunch because I have a 12:00 o'clock conference call, so we'll
3 see you back at 1:00 o'clock.

4 THE WITNESS: Okay. I actually have a plane that I
5 must catch, so I might have to come back.

6 THE COURT: What time is that?

7 THE WITNESS: It's at 2:30.

8 THE COURT: That may be a problem. So I'll see you
9 guys at 1:00.

10 (Court recessed from 11:59 a.m. until 1:11 p.m.)

11 (Court was called to order)

12 THE COURT: Sorry I'm late, counsel. I was working.

13 Next witness? It's my understanding that you all
14 agreed to excuse certain of the witnesses. (No response).
15 Yes, Judge, we agreed to excuse the last witness so she didn't
16 miss her plane.

17 MR. SHEVORSKI: That's correct, Your Honor.

18 THE COURT: Okay. I was trying to get it on the
19 record. Your next witness?

20 MR. CRISTALLI: Your Honor, plaintiffs call Mike
21 Viellion.

22 MIKE VIELLION, PLAINTIFF'S WITNESS, SWORN

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

25 THE WITNESS: First name Mike, last name Viellion,

1 V-I-E-L-L-I-O-N.

2 THE COURT: Hold on a second. I have to go take a
3 phone call. I'll be right back.

4 THE WITNESS: Sure.

5 (Pause in the proceedings)

6 THE COURT: Sir, before we get started, you'll
7 notice there's a pitcher next to you that has water in it. If
8 you should need some more, let us know. There are also a ton
9 of exhibit binders around you. You may get referred to some.
10 And there are M&Ms in the dispensers if you should need them.

11 THE WITNESS: Thank you, Your Honor.

12 THE COURT: You may continue, Mr. Cristalli.

13 MR. CRISTALLI: Thank you, Your Honor.

14 DIRECT EXAMINATION

15 BY MR. CRISTALLI:

16 Q Mike, could you state your educational background?

17 A I graduated from UNLV with an undergraduate degree
18 in Business Management and I graduated from the Boyd School of
19 Law in 2004 with a law degree.

20 Q After you graduated from the Boyd School of Law,
21 what did you do?

22 A I went to work directly out of law school with my
23 partner's real estate firm as a broker salesperson and since
24 have started a few development companies and a construction
25 company.

1 Q So with your law degree you went into business?

2 A Correct.

3 Q Tell us a little bit about your business, your real
4 estate and commercial businesses?

5 A So we develop retail bars on the Strip, we develop
6 fast-food restaurants. We've also built on the construction
7 side many different projects, from office to industrial to
8 residential.

9 Q During the course of your work, either in aspects of
10 construction, residential or commercial real estate, have you
11 ever been involved in any type of competitive bidding
12 processes?

13 A Sure. In all of the phases, obviously most
14 frequently on the construction side when you're a general
15 contractor you have the benefit of hosting the bid, bidding
16 process for your subcontractors and then participating as a
17 competitive applicant to the owner or the owner's third party
18 representative.

19 Q So when you act as a host to your subcontractors,
20 I'm assuming that you want to make sure that the process in
21 terms of the subs bids are fair and transparent?

22 A Absolutely. In order to maintain, you know, the
23 integrity of a fair and equitable process, you want to make
24 sure everybody is on a level playing field as far as
25 information. So if something were to change as far as scope

1 of work or, you know, budgeting, any information, you provide
2 that to everybody on your bid list.

3 Q So during the course of a sub bidding a particular
4 project, I'm assuming that questions arise by a particular sub
5 and they ask you as the general contractor to provide some
6 guidance, provide some answers with regard to their questions.

7 A Most of the time.

8 Q And what do you do when a sub asks a question about
9 particular contract or project and that question may -- or the
10 answer to that question may give a competitive advantage to
11 the person who is bidding that particular project?

12 A It depends on the situation, but it's always
13 disseminated to everyone on your bid list. Most of the time
14 it can be as informal as, you know, an email list serve, but
15 on the fancier projects -- I have a B2-1 limited contractor's
16 license, so some projects are million dollars, some are, you
17 know, twenty million. On the bigger projects there's usually
18 an iPad or something that updates, you know, with a push that
19 you let everybody know.

20 Q So if a question comes in that you want to answer
21 for a particular sub and you think that that answer could
22 provide a benefit to the rest of the subs, you would provide
23 that information to all of your subs bidding the contract?

24 A Absolutely.

25 Q Okay. Did there come a point in time when you got

1 involved in the marijuana industry in 2014?

2 A Yes. So we formed GBS Nevada Partners. We operate
3 a retail dispensary. In 2014 I was one of the original
4 owners.

5 Q So you were involved from the original medical
6 marijuana initiative?

7 A Yes.

8 Q Or legislative initiative with regard to that?

9 A Yes.

10 Q Okay. And what is your current role at GBS Nevada?

11 A In early 2017 I became the managing partner of GBS
12 Nevada Partners. As far as role, I oversee the leadership
13 team for daily operations and I have a more direct role in
14 compliance and finance and strategic growth for the company.

15 Q So you deal directly with oversight of your
16 management team for GBS Nevada?

17 A Yes.

18 Q Okay. And in that capacity, in that role you would
19 have familiarity with the application process in the 2018
20 licensing period?

21 A Yes. I'm the point of contact on our submitted
22 application and I assisted our attorney in putting together
23 the applications and submitting them to the State.

24 Q Okay. And so you're familiar with the application?

25 A Yes.

1 Q And you're familiar with the content of the
2 information you provided in the application to the Department
3 of Taxation?

4 A Yes.

5 Q Okay. What jurisdictions did you apply in for the
6 2018 licensing process?

7 A At a cost of \$5,000 each, we applied for the City of
8 Henderson, the City of North Las Vegas, unincorporated Clark
9 County and two licenses in the City of Las Vegas.

10 Q And you did not receive any licenses under the 2018
11 application?

12 A Correct.

13 Q What is your -- what was your understanding, the
14 requirements relating to the geographic locations for each
15 jurisdiction that you applied in?

16 A As a matter of fact, the reason we submitted two
17 applications in the City of Las Vegas was because we were --
18 we couldn't decide between two specific locations that we had
19 secured. It's clear to me the application that -- in several
20 different spots it requests exact information regarding
21 location specific to your proposed location, and I believe the
22 statute and the administrative code confirms that.

23 Q And you would know that because you were directly
24 involved with that portion of the application because of your
25 construction and real estate background?

1 A Correct. I secured the LOIs myself.

2 Q So for each location, for each jurisdiction you
3 applied for a license in, you went and secured LOIs?

4 A Yes.

5 Q Okay. And what other information did you believe
6 was necessary for you to present as much information as you
7 possibly could to the graders to give a persuasive
8 presentation as it related to location and building, so forth
9 and so on?

10 A I mean, any site-specific information that, you
11 know, you would go through in the course of development in
12 terms of, you know, a site plan, general floor plan, in this
13 case a general security plan that was specific to the
14 location, construction budget, operating pro formas.

15 Q And you thought that was important?

16 A Certainly. The application called for it, as far as
17 I'm concerned.

18 Q Okay.

19 MR. CRISTALLI: Can we -- Shane, can we pull up NRS
20 453D.210 (b).

21 THE WITNESS: Is there a paper portion or is it
22 going to come up here?

23 I.T. TECHNICIAN: B, you said?

24 MR. CRISTALLI: B. I'm sorry. As in Boy.

25 THE WITNESS: It's going to come up here or paper?

1 MR. CRISTALLI: Yeah, I hope so, eventually.

2 THE COURT: We're hoping.

3 MR. CRISTALLI: That's the plan. 453D.210(b).

4 Your Honor, may I just make sure I have the right
5 information here? Yes.

6 BY MR. CRISTALLI:

7 Q Do you see that section?

8 A Yes.

9 Q Okay. And specifically NRS 453D.210 references
10 "Acceptance of applications for licensing; priority in
11 licensing; conditions for approval of application; limitations
12 on issuance of licenses to retail marijuana stores; competing
13 applications." Can you read out loud subsection (b)?

14 A "The physical address where the proposed marijuana
15 establishment will operate is owned by the applicant or the
16 applicant has the written permission of the property owner to
17 operate the proposed marijuana establishment on that
18 property."

19 Q So that provision in the NRS would be supportive of
20 your understanding that you had to provide specific locations
21 for each jurisdiction that you applied in?

22 A Yes.

23 Q Okay.

24 MR. CRISTALLI: Shane, can we go to NAC453D.268,
25 specifically 2(e).

1 BY MR. CRISTALLI:

2 Q So NAC453D.268 is the "Submission of application by
3 person who holds medical marijuana establishment registration
4 certificate for marijuana establishment of same type or
5 different type; submission of application by person in
6 response to request for applications." Now, going down to
7 2(e), can you -- well, 2 states, "An application on a form
8 prescribed by the Department. The application must include,
9 without limitation." And could you read (e)?

10 A "The physical address where the proposed marijuana
11 establishment will be located and the physical address of any
12 co-owned or otherwise affiliated marijuana establishments."

13 Q And this is the regulation; correct?

14 A Correct.

15 Q Okay. And it's your understanding based on reading
16 of that that you were required to put information specific to
17 locations as it related to each jurisdiction that you applied
18 for a retail license in?

19 A Yes.

20 Q And going back a little bit, you wanted to be as
21 detailed as you possibly can so that the scorers understood
22 how much effort went into the process of selecting a location,
23 making sure all of the specifications were outlined?

24 A Yes. The application calls for specific
25 encouragement in the details.

1 Q Okay. Let's go to the application. Exhibit 5,
2 specifically page 9, Section 4, starting with -- in the second
3 paragraph starting in the second sentence, "Therefore." The
4 application starts --

5 THE COURT: So this is on Bates number 20?

6 MR. CRISTALLI: I'm sorry, I don't have the Bates
7 number, Your Honor.

8 UNIDENTIFIED SPEAKER: That's correct.

9 MR. CRISTALLI: Yes.

10 BY MR. CRISTALLI:

11 Q It states, "Therefore, applicants are encouraged to
12 be as specific as possible regarding the services provided,
13 geographic location, and information submitted for each
14 application criteria or category." It says that; right?

15 A Yes.

16 Q What's your understanding of that language in the
17 application for the 2018 retail license?

18 A My understanding is the way we filled it out, that
19 specific proposed locations are required.

20 Q Okay. Proposed locations. In addition to that it
21 talks a little bit about services provided, geographic
22 location, information submitted. In addition to the location,
23 you also included floor plans; correct?

24 A Yes.

25 Q You also included plans for security; right?

1 A Yes.

2 Q Construction budgets?

3 A Specific to each location. Correct.

4 Q And specific to each location, estimated operating
5 pro formas?

6 A Yes, specific to each location. Yes.

7 Q And let's just talk about that. As it relates to
8 those categories which you submitted for a scoring and
9 consideration, each -- all of the information you provided --
10 not all, but a portion of the information you provided was in
11 fact different as it related to jurisdiction to jurisdiction
12 to jurisdiction that you applied in?

13 A Yeah. I mean, absolutely. It was a situation where
14 if you had a proposed location on or near the resort corridor
15 your expected sales would be different than if you had a
16 proposed location somewhere far away in the suburbs.

17 Q Security plans would be different?

18 A Relative to each floor plan, absolutely.

19 Q Size of the building would be different?

20 A Theoretically you would base the size of the
21 building on how much you think you could sell, so yeah.

22 Q Impact on the community may be different?

23 A Absolutely. I mean, obviously the impact near the
24 resort corridor is going to be different than the impact in,
25 you know, suburban Vegas for sure.

1 Q Budgets will be different?

2 A I mean, absolutely, depending on the build.

3 Q And you -- excuse me. And you as an applicant
4 considered all of that and presented your application in a way
5 that had very specific information?

6 A Yes.

7 Q Let's go to page 13 of the application, specifically
8 5.3.3, which is tab 3. This is the unidentified portion of
9 the application, I believe. That section references building
10 establishment information. It goes on to say, "Documentation
11 concerning the adequacy of the size of the proposed
12 recreational marijuana establishment to serve the needs of
13 persons who are authorized to engage in" -- a marijuana
14 establishment to serve the needs of the persons -- I'm sorry
15 -- "in the use of marijuana must be included in this tab. The
16 content of this response must be in a non-identified format
17 and include general floor plans with all supporting details."
18 Then it goes on to note, "The size or square footage of the
19 proposed establishment should include the maximum size of the
20 proposed operation. The start-up plans and potential
21 expansion should be clearly stated to prevent needless
22 misunderstanding and surrendering of certification."

23 Again, your understanding in reading of that
24 provision in the application would suggest that you wanted to
25 be as detailed as you possibly could and as specific as you

1 possibly could with regard to the jurisdictions that you were
2 applying in?

3 A Yes. I think that's one of the many places of the
4 application that refers to plan specific information, I think.

5 Q Okay. Going down to tab 4, specifically 5.3.4.3, it
6 talks about procedures to insure adequate security measures
7 for building security. Again, the security measures would be
8 specific to the building in the jurisdiction that you're
9 applying in and its surroundings. Would that be safe to say?

10 A It would definitely have an affect and the floor
11 plan is going to have an affect. You're going to have -- do a
12 different security plan depending on where your vault is,
13 depending on how your cameras lay out, depending on where your
14 entrance is, depending on a lot of things that are going to be
15 building and site specific.

16 Q Going on to tab 6, "Operations and Resource Plan,"
17 specifically 5.3.6.1, it talks about a detailed budget for the
18 proposed establishment, including pre-opening and first year
19 operating expenses. Your understanding, again, is that was
20 specific to the building type that you put into the
21 jurisdictions that you are applying for. Would that be
22 accurate?

23 A Yeah, especially with regard to the operating
24 expenses. Obviously as a retail operator your expenses are
25 going to be different depending on the volumes you would

1 determine from each location. You're going to -- I mean,
2 that's the nature of the retail business is location.

3 Q How does the budgets change?

4 A Well, from a construction standpoint each
5 jurisdiction would have different permitting fees. You know,
6 each jurisdiction varies a little bit on the construction
7 side. And cost of construction, close to the Strip you pay
8 the Strip tax. You know, it's just going to depend on
9 location.

10 Q Is there anything that we missed in terms of what
11 you did specifically for each jurisdiction that differed from
12 one another as it related to your locations?

13 A No. It was the -- with regard to this it would be
14 the estimated annual income and expenses. It would be each
15 specific construction budget as it relates -- and scope as it
16 relates to the proposed locations that I submitted and
17 corresponds with the size of the floor plan.

18 Q And you did those very specific to the locations
19 that you secured in the jurisdictions that you were applying
20 in?

21 A Yes. I -- yes.

22 Q Okay. We've already talked about this a little bit,
23 but in tab 7, 5.3.7.1, it talks about the likely impact of the
24 proposed recreational marijuana establishment in the community
25 in which it is proposed to be located. I would assume

1 depending on the location that you put your facility in would
2 impact that particular community. Would that be safe to say?

3 A Absolutely. Anything related to the resort
4 corridor, like I said before, the community impact is going to
5 be different than something related to a specific area in
6 suburban Vegas.

7 Q And going back to your experience as -- in the
8 construction and real estate world and competitive bidding
9 processes, the more detail you have as it relates to the
10 proposed construction, obviously you've got to be competitive
11 in your price, the better chances you have to be successful in
12 the bid; right?

13 A Sure. Nobody in the competitive application process
14 likes any question marks when it comes to am I missing
15 something or am I not missing something on the bid side.

16 Q And you thought by doing your due diligence, by
17 securing your locations, by creating your building plans and
18 your schematics, by doing your budgets and pro formas for each
19 jurisdiction, each location, you were giving yourself the best
20 advantage possible to be successful in getting the location?

21 A I would go a step further and say I was doing -- in
22 order to get your application considered, I was doing what was
23 needed. I mean, it goes without saying some of the detail
24 would hopefully, like any competitive process, you know, move
25 you across the finish line. But to be quite honest, in the

1 application I was doing what was required.

2 Q So you didn't believe that this was discretionary,
3 that you had a choice to secure a location?

4 A No.

5 Q You didn't think that you had a choice to present
6 building plans, schematics, budgetary pro formas specific to
7 the location and the jurisdictions you were applying in?

8 A No.

9 Q You thought you had to do it?

10 A Yes.

11 Q Because why?

12 A Because the application states it in several
13 different spots. And like I said before, the statute and the
14 administrative code confirmed it.

15 Q Going to page 17 of the application, in the lower
16 box where it talks about a detailed budget, again it
17 references a budget for the proposed establishment, including
18 pre-opening, construction and first year operating expenses
19 and it allocates a point score to that, doesn't it?

20 A Yes.

21 Q Okay. And so not only were you doing it because you
22 were complying with the law, it also was beneficial because
23 you were going to get points for doing it?

24 A Yes.

25 Q Going to the next page of the application, page 18,

1 the second box, it talks about "documentation concerning the
2 adequacy of the size of the proposed marijuana establishment
3 to serve the needs of the persons who are authorized to engage
4 in the use of marijuana, including building plans with
5 supporting details." It says that; right?

6 A Yes.

7 Q What was your thought about that? Oh, again, by the
8 way, it has a 20 point allocation to that.

9 A My thought would be if I didn't do it I would get
10 zero out of 20 points.

11 Q Did there come a point in time that you discovered
12 that some of your competitors were not doing what you were
13 doing with regard to securing specific locations for the
14 jurisdictions that they were applying in?

15 A The point in time was when the litigation started,
16 through different information that's been passed. And I
17 maintain a good relationship with, you know, people on both
18 sides. It was brought to my attention and confirmed that
19 people listed P.O. boxes as locations or instead of a P.O.
20 box, quote, unquote, P.O., it was a Mail Boxes, Etc. with a
21 specific address.

22 Q And they also used the same building floor plans,
23 budgetary pro formas for each location or jurisdiction that
24 they applied in?

25 A They used the same information across all

1 applications.

2 Q Did you ever get a notice from the Department -- Did
3 you ever get a notice --

4 Did I miss something?

5 THE COURT: Are you okay?

6 MS. SHELL: Your Honor, I was going to object to
7 something, but then I figured you'd just overrule me, so.

8 THE COURT: I would, but that's okay. If you want
9 to make your record, it's okay.

10 MS. SHELL: No, I'm fine, Your Honor. I'm good.

11 THE COURT: All right. If we had a jury in here it
12 would be different. You guys would be acting like you were
13 adults and it would be nice, but.

14 Okay. Keep going.

15 MR. CRISTALLI: Thank you.

16 BY MR. CRISTALLI:

17 Q Did you ever get a notification from the Department
18 of Taxation Marijuana Division that you did not have to list
19 specific locations or -- I'm sorry, secure specific locations
20 for the jurisdictions that you were applying in?

21 A I did not. After the application period opened, if
22 I recall correctly, I think that second week of September, to
23 the contrary there was an informational email that went out
24 encouraging the applicants to -- basically the State provided
25 a checklist encouraging the applicants to make sure they had

1 the different attachments filled out with regard to specific
2 locations.

3 Q So you in fact did receive a notification from the
4 Department of Taxation Marijuana Division subsequent to the
5 licensing period --

6 A Well, I --

7 Q -- which provided certain information, none of which
8 -- I'm sorry, it wasn't after, it was before the licensing
9 period; correct?

10 A It was right at the beginning. I can't remember if
11 it was the first day or the tenth. I mean, it wasn't the
12 10th. It was when it was still open at some point.

13 Q Okay. Giving you notification of certain issues as
14 it related to the application process?

15 A Yes. And it wasn't limited just to the proposed
16 location. It had to do with the fee and some other stuff,
17 too. But included in that reminder was information regarding
18 the different attachments, referencing the different
19 attachments that had to do with the property locations.

20 Q And it never said in that notification that the
21 applicant was not required to secure a location in the
22 jurisdiction they were applying for, but rather they could
23 just have a P.O. box?

24 A It did not and I never received that notification at
25 any time.

1 Q It never changed the language in the application
2 specific to the building plans, the floor plans?

3 A No.

4 Q Never changed the information with regard to the
5 community impact associated with the building in the community
6 that you were putting your facility in?

7 A No.

8 Q Didn't change the requirement for the budgets as it
9 related to the buildings that you were putting in those
10 jurisdictions?

11 A No.

12 Q It seems like that would be important information to
13 provide to the Department when considering a license for a
14 particular jurisdiction?

15 A Absolutely.

16 Q As we indicated earlier, you did not receive a
17 license?

18 A No.

19 Q Can we go to Exhibit 219? That is the entity
20 application key. And specifically, RD402.

21 THE CLERK: Mr. Cristalli.

22 MR. CRISTALLI: Yes?

23 THE CLERK: I don't have 219.

24 MR. CRISTALLI: I'm sorry. Did I miss that?

25 THE COURT: Dulce, where's 219?

1 THE CLERK: I don't have it either.

2 THE COURT: Oh, okay. I have a library cart back
3 there, Mr. Cristalli, and it's not on it.

4 MR. CRISTALLI: I have it on my supplemental exhibit
5 list, and so I'm under the assumption that you received this
6 as well.

7 MR. KOCH: 5006 is the same.

8 MR. CRISTALLI: Okay.

9 MR. KOCH: Are you looking at the I.D. key?

10 MR. CRISTALLI: Yeah.

11 MR. KOCH: 5006.

12 MR. CRISTALLI: So I will change to 5006.

13 THE COURT: 5006?

14 THE CLERK: Okay. That's admitted.

15 MR. CRISTALLI: Thank you.

16 (Pause in the proceedings)

17 BY MR. CRISTALLI:

18 Q Okay. Moving your attention to RD402 through 406,
19 do you recognize that?

20 A Yes. That's my company, GBS Nevada Partners.

21 Q Okay. And that's how on the Department website when
22 they released information they put an RD number to the
23 applicant; correct?

24 A Yes. I believe they recognized me as Recreational
25 Dispensary -- my five applications were Recreational

1 Dispensary 402, 403, 404, 405 and 406, I assume.

2 Q You applied in five different jurisdictions?

3 A I applied in four jurisdictions.

4 Q Sorry.

5 A One jurisdiction twice.

6 Q Correct.

7 MR. CRISTALLI: Can we go to Exhibit 5008? And if
8 we could find, Shane, 402 to 406. They're grouped.

9 BY MR. CRISTALLI:

10 Q And while Shane is pulling that up, Mike, let's just
11 talk a little bit about the location. You testified that you
12 learned that some applicants did not disclose locations or
13 specifics for their building as it related to jurisdictions.
14 You did. We talked a little bit about your experience in
15 competitive bidding processes in construction and real estate.
16 What is your -- what are your thoughts with regard to
17 applicants receiving inconsistent information with regard to
18 the requirements in the application and certain applicants
19 putting information with regard to the specifics of locations
20 and others not?

21 A Well, I mean, to promote a fair and impartial
22 process I don't know how one person could be provided
23 information regarding the application that the rest of the
24 applicants or a group of the applicants were not. I think to
25 level the playing field, so to speak, everybody has got to

1 have the same information. That's the only way it makes it
2 fair.

3 Q Directing your attention now to Exhibit 5008, on the
4 top right-hand corner it references RD402 through 406. Do you
5 see that?

6 A Yes.

7 Q And we've previously identified that your company,
8 GBS Nevada, is referenced as 402 through 406?

9 A Yes.

10 Q Okay. To the left of that it -- well, first of all,
11 it is called a tally sheet and it is specific to the non-
12 identified team, so I'm assuming the non-identified portion of
13 the application. It talks about construction and that there
14 was an allocation of 20 points for construction; correct?

15 A Yes.

16 Q Again, what did you do with regard to building plans
17 and construction specific to the locations in the
18 jurisdictions that you applied in?

19 A I submitted five different LOIs securing five
20 different pieces of property with five different general floor
21 plans, five different security plans corresponding with those
22 general floor plans, five different construction budgets
23 corresponding with those general floor plans.

24 Q And what -- how many points out of the 20 did you
25 receive for that category?

1 A I received 15.67 points.

2 Q Okay. Going down to care, quality, safekeeping,
3 which is a 90 point allocation, how many points did you
4 receive for that?

5 A I received 74.17 points.

6 Q And in that portion of the scoring sheet, it also
7 talks about security procedures that we already discussed that
8 was specific to the building that you were putting in the
9 particular locations in jurisdictions that you were applying
10 in?

11 A Yes. That and the detailed budget as well would
12 have been something else that I didn't mention just now that I
13 included. I estimated income and operating expenses for
14 specific locations under that category.

15 Q So for the section that references building
16 construction, 20 points, and the portion that identifies care,
17 quality and safekeeping, 90 points, you put very different and
18 specific information for each location that you were applying
19 for in the jurisdictions that you were applying in?

20 A Yes.

21 Q Okay. And finally, community impact, there was an
22 allocation of 15 points. What did you receive -- did I ask
23 you what you received in care, quality, safekeeping?

24 A 74.17.

25 Q Okay. Going back to community impact, there's an

1 allocation of 15 points. How many points did you receive?

2 A 8.33.

3 Q Again, you spoke previously about specific
4 information you put in there as it related to community impact
5 specific to the locations and the jurisdictions that you
6 applied in?

7 A Yeah. Generally speaking the community impact is
8 going to be different depending on the location.

9 Q And you received a total score, calculating all of
10 those points, of what?

11 A 98.17 on the non-identified criteria.

12 Q And that's out of 125 points?

13 A Yes.

14 Q Okay. For four different locations?

15 A Five different locations.

16 Q Five locations. I'm sorry.

17 THE COURT: Four jurisdictions.

18 MR. CRISTALLI: Four jurisdictions. Thank you, Your
19 Honor.

20 BY MR. CRISTALLI:

21 Q All put here on one tally sheet. So here's the
22 question. You received the same score out of that non-
23 identified portion for each jurisdiction that you applied in?

24 A Yes. The non-identified criteria was supposed to be
25 blind scoring and it appears to me -- again, if you look at

1 the top it says, "Non-identified Team Summary Page" in
2 parentheticals (per application). I submitted five
3 applications. It appears to me that I was scored exactly the
4 same for five applications containing five different pieces of
5 information.

6 Q And you said this was supposed to be a blind
7 process.

8 A I believe -- yeah, I don't even know how that's
9 possible.

10 Q But you received the same score despite providing
11 different information in this section of the application for
12 each jurisdiction you applied in?

13 A It appears from here that not only did I receive the
14 same score, I received only one tally sheet for \$25,000 worth
15 of applications fees.

16 Q And did you have an opportunity to look through this
17 entire detailed score by category sheet 9, identified as it
18 relates to all the applicants?

19 A I did.

20 Q Do you notice that some applicants were grouped
21 together with one tally sheet and other applicants had
22 separate tally sheets for each jurisdiction that they applied
23 in?

24 A I -- generally speaking most of them had their own,
25 but there were some that were linked together. I don't know

1 the particulars because I didn't look into it other than mine.

2 Q Do you have any explanation as to how you could
3 receive the same score for each location and jurisdiction that
4 you applied in, despite providing different information for
5 each of those applications in each of the jurisdictions you
6 applied in?

7 A My only explanation is with regard to the time that
8 the State documented at the bottom, it took them 21 minutes to
9 review my 200-page application. I would imagine that made it
10 a little easier on them.

11 Q So when you break it down to the applications that
12 you submitted, on the bottom on the total time period spent on
13 your applications -- Oh, and by the way, how many pages was
14 your application as it related to the non-identified portion
15 of the application?

16 A The blind non-identified portion was -- I don't
17 recall exactly -- plus or minus 200 pages.

18 Q Okay. Plus or minus 200 pages with different
19 information in each application that you applied in specific
20 to the jurisdictions that you applied in. How long did it
21 take to review those application?

22 A It appears from the bottom that they took about 20
23 minutes on each, so an hour and -- well, 1.75 would be what,
24 an hour and 45 minutes or something. An hour and 45 minutes
25 on five applications.

1 MR. CRISTALLI: Court's indulgence.

2 BY MR. CRISTALLI:

3 Q So, Mike, using your recollection as to what you put
4 into the applications specific to the jurisdictions that you
5 applied in and using your construction background, can you
6 give us a little detail about the specifics of the information
7 you put in, the budget. Well, first of all, you had to secure
8 the location, but the budgets, the plans, the floor plans,
9 whatever additional information you put in there specific to
10 the locations you applied in and how long -- being in the
11 business, how long would it take to review five different
12 applications with specific information as to each application?

13 A I mean, to do it correctly it's going to obviously
14 take longer than 20 minutes. With regard to the specific
15 information, you know, we maintain -- in our application we
16 maintain specific floor plans to the locations that we
17 secured. So if I had an LOI, for instance, for 3,000 feet or
18 3,500 feet or 4,000 feet, we would put a corresponding floor
19 plan in there that matched the current floor plan under which
20 we operate and then tailor the security plan to that specific
21 location.

22 And then with regard to the construction budget,
23 obviously it's going to cost more to build 5,000 feet than
24 it's going to cost to build 4,000 feet, so it was tailored to
25 square footage with, you know, estimations based on

1 jurisdiction and finishes.

2 And then with regard to the operating pro forma, I
3 think we had one near the Strip that we estimated the retail
4 income to be north of \$20 million. And then we had one in the
5 north that we estimated the retail income to be closer to 7 or
6 8. I think from a practical experience standpoint the
7 operating expenses, it goes without saying, are going to be
8 different or those two very different locations.

9 Q And you have experience. These are sophisticated
10 plans. This is a business --

11 A General floor plans. I mean, we didn't submit
12 construction plans, you know, but.

13 Q Sophisticated enough. How long do you think that
14 somebody who doesn't or isn't qualified to review those type
15 of plans because he isn't in the business of construction or
16 real estate would you think would take to review close to 200
17 pages five different times? More than an hour?

18 A I think just to look at it would take an hour. I
19 mean, I think you're -- you know, if you're not -- you know,
20 you have to look at it as a whole, right? You couldn't look
21 at a floor plan, just pull it up and say, hey, yeah, that
22 looks good and then go to the operating budget. You need to
23 understand both. It wouldn't mean anything to you if you
24 didn't understand it. I guess you could literally just look
25 at it and it would take you five seconds.

1 MR. CRISTALLI: No further questions, Your Honor.

2 THE COURT: Any of the other plaintiffs wish to ask
3 questions at this time?

4 Ms. Haar.

5 MS. HAAR: Thank you, Your Honor.

6 CROSS-EXAMINATION

7 BY MS. HAAR:

8 Q Good afternoon.

9 A Good afternoon.

10 Q Can I get you to turn to Exhibit 2009, please.

11 THE COURT: Those are in the black books, sir.

12 (Pause in the proceedings)

13 THE WITNESS: Okay.

14 BY MS. HAAR:

15 Q This is the Governor's Task Force. Are you familiar
16 with the Governor's Task Force report?

17 A No.

18 Q No? So the Governor put forward an entire Task
19 Force regarding the implementation of Question 2, which is the
20 regulation and taxation of marijuana, and you didn't look into
21 it at all?

22 A No.

23 Q You were here when Mr. Ritter testified; correct?

24 A Yeah, for part of it.

25 Q Okay. And he clarified that the Governor's Task

1 Force report had indicated -- it's on page 19, that the Task
2 Force recommended that the consideration of location would be
3 removed.

4 A Which -- these are numbered like 2400.

5 Q 2515. Two-thirds of the way down the page, Rating
6 Criteria and Applications.

7 A Uh-huh.

8 Q "Task Force recommends the impartial numerically
9 scored process used by the medical marijuana program be
10 revised for retail marijuana stores to remove consideration of
11 location and focus only on the applicant qualifications for
12 operation of a marijuana establishment." But you did not seek
13 out any additional information like the Governor's Task Force
14 Report in looking for guidance on how to complete your
15 application?

16 A No. I sought out the statute and the administrative
17 code. I mean, I've never seen this report before.

18 Q Okay. Let's look specifically at Exhibit 2018.
19 2018 should be the scoring sheets or the Final Store
20 Application Scores and Rankings.

21 A Yes.

22 Q Okay. And so you applied in Clark County,
23 Henderson; correct?

24 A Yes.

25 Q And there were six conditional licenses awarded in

1 Clark County, Henderson?

2 A Yes.

3 Q And the last place or the sixth conditional license
4 awarded was 210.16 in points?

5 A Uh-huh.

6 Q And in that jurisdiction you received 180.17 points,
7 is that correct?

8 A Yes.

9 Q Which put you 29.99 points out of receiving a
10 license?

11 A Yes.

12 Q All right. Let's continue down. Clark County, Las
13 Vegas. There were ten conditional licenses awarded there;
14 correct?

15 A Uh-huh.

16 Q And the lowest awarded license received 208 points?

17 A Yes.

18 Q And you received 180.17 points?

19 A Yes.

20 Q That put you 27.83 points out of receiving a
21 conditional license?

22 A I'll assume the math. Yes.

23 Q Keep going down to Clark County, North Las Vegas.
24 You applied in that jurisdiction?

25 A Yes.

1 Q And there were five conditional licenses awarded in
2 that jurisdiction?

3 A Yes.

4 Q And the last place conditional license awarded
5 received 214.5 points?

6 A Yes.

7 Q And in that jurisdiction you received 180.17 points?

8 A Yes.

9 Q Which put you 34.33 points below receiving a
10 conditional license?

11 A Yes.

12 Q And jumping down, the last jurisdiction you applied
13 to was unincorporated Clark County?

14 A Correct.

15 Q And there were ten conditional licenses given in
16 that jurisdiction?

17 A Yes.

18 Q The lowest scored conditional license received in
19 that jurisdiction was 210.16 points?

20 A Yes.

21 Q You received 180.17 points in that jurisdiction?

22 A Yes.

23 Q And that would be 29.99 points out of receiving a
24 conditional license?

25 A Yes.

1 Q And of the items that you had described previously
2 that you were concerned about the points you received on, the
3 first was the non-I.D. building portion, which you received
4 15.67 out of 20 points?

5 A Yes.

6 Q And so that would be 4 additional points you were
7 requesting if you were going to have a full score on that one?

8 A Sure. I'm not looking at it, but I would assume so.

9 Q If we can bring up 5008. And given that the lowest
10 -- the closest in terms of points for jurisdictions that you
11 had applied for was Clark County, Las Vegas, where you were
12 27.83 points out of the running, you would have received -- it
13 sounds like had it been scored the way you would have liked,
14 4 additional points for a building.

15 A Well, I think -- I don't think that's a real fair
16 characterization because they scored all five of my
17 applications, as you just so eloquently pointed out, with the
18 exact same score on the exact same tally sheet. So I really
19 don't -- I can assume your math is correct, but that's about
20 all that's correct in this whole process is your math. So I
21 don't -- I mean, if you're going to ask me if my scores are
22 correct, I'm certainly not going to argue that the number on
23 the paper is what you read, but clearly it says non-
24 identified, which is blind. It says per application, which is
25 one. And you just read me five of the same exact numbers on

1 the same tally sheet. So I don't really -- I'm not in a
2 position to dispute that you're reading the correct number, if
3 that's what you're looking for.

4 Q Well, you would address -- the three areas of
5 concern for you that you addressed on direct were community
6 impact, under care, quality and safekeeping the building
7 security issue, and then the points for the building section
8 on the non-I.D. Collectively across all of those you
9 identified falling short 12 points on a perfect score, but
10 Clark County, Las Vegas was your closest application where you
11 were more than 27 points out of receiving a conditional
12 license. Is that correct?

13 A No, that's a total mischaracterization. I'm not up
14 here saying my -- you know, crying over sour grapes for my
15 points. I'm up here saying the process wasn't followed. So
16 you're including people that got licenses that didn't include
17 specific location because of some report that you just asked
18 me about that I've never seen, and I can assume 90 percent of
19 the applicants didn't see it.

20 So I'm not saying my score was incorrect and if I
21 get the extra 4 points I'm going to be above the line. That's
22 not why I'm here. I'm here to say if you're going to score
23 based on the requirements in the application, then all of
24 this, all of these numbers are messed up, I can imagine. I
25 haven't obviously looked at everyone's application with the

1 detail that I've looked at mine, but for you to point out
2 numbers that may as well be unicorns because they're not real,
3 like I don't -- I understand what you're doing, but I just --
4 I don't want you to mischaracterize why I'm here.

5 Q All right.

6 A I'm not here to argue over numbers. I understand
7 that's what the paper -- the number on the paper is definitely
8 what the paper says.

9 Q Okay. Let's jump to the allocation itself, then,
10 which I believe was Exhibit 5.

11 A Is that in this book?

12 Q No. It would be in one of the white --

13 THE COURT: It's in the white one on the very end by
14 the blue truck. Up here, sir, on that shelf there.

15 THE WITNESS: Volume 5?

16 THE COURT: No, it should be in the first volume
17 because the first volume ends with Exhibit 20, if I remember
18 correctly.

19 THE WITNESS: I'm sorry, ma'am, what was the number?

20 MS. HAAR: It's Exhibit 5 and we will go to page 21
21 of 34, which is Attachment A.

22 BY MS. HAAR:

23 Q Are you there?

24 A Yes, ma'am.

25 Q Are you familiar with this?

1 A Very much so.

2 Q Okay. And can you please read the first -- so the
3 very first line within the application says, "Check the box
4 for the type of marijuana establishment." Do you see that?

5 A Yes.

6 Q Can you please read the box below that?

7 A "Marijuana establishment proposed physical address.
8 This must be a Nevada address and cannot be a P.O. box."

9 Q Can you please read the entire box? Is that --

10 A That is the entire box on mine. Sorry.

11 Q Can I see the -- what is the date on the bottom of
12 that one? The very bottom left-hand corner.

13 A I don't know. 6/22/2018?

14 Q Version 5.4?

15 A Yeah. This is the one I got. Can I get a license?

16 THE COURT: The one that's in evidence shows Version
17 5.4, 6/22/2018. Recreational Marijuana Establishment License
18 Application, page 134, MMLF00012. Is that not what other
19 people are using? Because that's the one we have which is the
20 official court record.

21 MS. SHELL: Your Honor, did you say the Bates ended
22 in one two?

23 THE COURT: That's on page 1. On page 1. MMLF00012.
24 I'm under tab 5 in the book. I'm not saying it's right, I'm
25 just saying that's what the court's record is.

1 MS. SHELL: I understand. I understand, Your Honor.

2 THE COURT: Which is why I keep asking people for
3 Bates numbers when you're talking about page numbers, to
4 insure that the record is the same for everybody. Is there a
5 problem?

6 MS. HAAR: We have a different version.

7 THE COURT: So that's not the one that's part of the
8 court record.

9 MS. HAAR: Correct. So at this point I don't have
10 any more questions for this witness.

11 THE COURT: Okay.

12 MR. KEMP: Your Honor, can we get a copy of the
13 different version that counsel was using?

14 THE COURT: So in a little bit we're going to talk
15 about the privilege log and then we can talk about all those
16 things at the same time.

17 So did you have any more questions for this witness?
18 Ms. Haar. I'm only on Ms. Haar, not to you yet, Mr. Koch.

19 MS. HAAR: No. I have no questions.

20 MR. KOCH: I think she said she was done.

21 THE COURT: Okay. Mr. Koch, would you like to ask
22 any questions?

23 MR. KOCH: Yes.

24 //

25 //

CROSS-EXAMINATION

BY MR. KOCH:

Q Mr. Viellion, if you would open back up to Exhibit 5008. That was the non-identified tally sheets we were looking at earlier.

A The smaller book, sir?

THE COURT: The smaller black book, I believe.

MR. KOCH: It would have been this one.

THE WITNESS: Is this the one that she asked me to look at?

MR. KOCH: Here we go, 5008.

BY MR. KOCH:

Q And this is the tally sheet we were looking at earlier; correct?

A No. This is somebody else's.

Q I guess the set of tally sheets. This is a combined set of tally sheets that --

A Oh, I'm sorry. Yes, sir.

Q All right. And you looked at RD402 through 406, was your -- the code name number for GB Sciences or GB --

A It's GBS Nevada Partners.

Q GBS Nevada Partners. Okay.

A I'm sorry. Are these in numerical order, or is there --

Q Yeah, they're in numerical order. The top right --

1 it's double-sided, if you'll see, so I believe yours is
2 actually on the left-hand side or it might be the back of a
3 page.

4 A It goes from 40-- Oh, on the back of the page. Yes.
5 Sorry. Yes, sir.

6 Q All right. And you had indicated that you had a
7 number of applications that were grouped together and a
8 combined tally was prepared for that combined set of
9 applications, is that right?

10 A Yes.

11 Q Okay. And did you say you had a chance to look
12 through other tally sheets for other applicants?

13 A I didn't -- I just basically -- I didn't look
14 through the tally sheets. I just looked at the top right to
15 see if I was missing something or how my non-identified could
16 be looped together. So, you know, I didn't look at the tally
17 sheets, I just looked at the numbers.

18 Q All right. I just want to look at a couple of
19 others just for the question you had raised. Let's look at --
20 turn to 590 through 602, which would be on the left-hand or
21 back of the page. Are you there?

22 A Yes, sir.

23 Q Again, here we have a set of applications. It
24 appears this would be 12 or 13 applications together and it
25 appears to be scored together. Do you know which applicant

1 this was for?

2 A I do not.

3 Q I'll represent based upon the key, the numbers that
4 are listed in the key that I think you looked at earlier, this
5 is Lone Mountain, which is one of the parties that received a
6 license. Does it surprise you that a party that received a
7 license has their applications, not-identified, grouped
8 together for scoring purposes?

9 A I mean, if you're simply trying to point out
10 additional errors on the non-identified side, I'm not the one
11 to argue with you.

12 Q I'm not trying to point out additional errors. I'm
13 asking would it surprise you if an applicant who received
14 enough points to be granted a license be also scored in the
15 same way that your applications were scored?

16 A Again, I'm not -- the method in which they were
17 scored is where I think the flaw comes in. So I don't think
18 it's a winner or I don't think it matter what table you're
19 sitting at whether or not the non-identified criteria -- how
20 could it be scored together? You know, it doesn't surprise me
21 regardless of what table. I think that it's wrong.

22 Q All right. In the tab on the bottom on that sheet
23 it also lists -- it appears -- is that half an hour for
24 building construction, about an hour and a half for care
25 quality, half an hour for community impact. And so those

1 applications appear to have been scored by those graders in a
2 time period of two and a half, two hours and two hours,
3 similar to what GB's applications were scored?

4 MR. CRISTALLI: Objection. I think that misstates
5 the evidence.

6 THE COURT: Overruled.

7 THE WITNESS: I don't know with regard to this
8 application if this is one of the ones that submitted the same
9 information with regard to location or different information
10 with regard to location. I think that's certainly of material
11 importance when you're talking about time. So if you're
12 asking me if 2.5 hours is similar to 1.75 hours, I mean, I
13 don't think there's much of a difference there, but obviously
14 there's more.

15 BY MR. KOCH:

16 Q And I guess my overall question is you don't believe
17 or you don't have any information that leads you to believe
18 that your applications were treated any differently than
19 anyone else's; is that right?

20 A No. I have plenty of reason to believe that. If
21 you have a non-identified -- well, clearly they were treated
22 different than anybody else's because if you just go to the
23 next page or the previous page and there's one -- I mean, this
24 is their sheet. It says, Summary Page per Application. So if
25 one applicant has something that says Summary Page, One

1 Application, and they have five summary sheets and I have five
2 summary sheets -- I mean, I have one summary sheet for five
3 applications, it goes without saying that we were treated
4 differently.

5 Now, if you're saying was I treated differently than
6 everybody in the process, whether or not that's true I'd have
7 to evaluate everything in the book. But I was certainly
8 treated differently than some people in the process, and to
9 your point, as was this applicant. The process wasn't the
10 same for this applicant as it was for the applicant before or
11 after them, either.

12 Q And that, I believe, is based solely upon what these
13 tally sheets show based upon the grouping together of the
14 applications?

15 A Well, no, it's not based solely on that, but
16 certainly this is one factor.

17 Q Okay. The next page -- keep that open -- 603
18 through 608, I've got five, six applications there. And this
19 applicant, it looks like those are tallied together, same
20 score for all five or six applications and the time scoring
21 down below, you know, I'll say about the same time. You can
22 correct me if I'm wrong. About the same time for those five
23 or six applications as GBS Partners. I keep getting that name
24 wrong. I think there's a lot of GB's in this case.

25 A Yeah. GBS Nevada Partners.

1 Q Okay.

2 A Again, I mean, I would offer the same answer. If
3 it's non-identified criteria, how can you score it together if
4 you don't know who it is? I mean, is that just luck?

5 Q And the fact that this applicant here, which is
6 Global Harmony, who I believe is a plaintiff in case, also did
7 not receive a license, you don't have any reason to understand
8 whether their building plan was good, bad or --

9 A I don't know anyone else's application besides mine.

10 Q And so your complaint is not that your application
11 was not scored at all; right?

12 A I mean, that would be -- not scored at all or not
13 scored appropriately?

14 Q Your application was scored; correct?

15 A Yeah. I received a score for all five applications.
16 The same score.

17 Q And you got points for your building plan; correct?

18 A Yes.

19 Q They weren't as high as you would like to have
20 qualified for a license; correct?

21 A No, I don't necessarily -- I don't think you can
22 characterize my position as that.

23 Q Other than the review of the tally sheets that we
24 have here and the supposition that those were graded together
25 and the determination based upon that that they were

1 improperly scored in some way, you don't have any information
2 that leads you to believe that an evaluator in particular did
3 something improper with your application because of
4 information it received from you or from anyone else?

5 A I think you can look no further than the title on
6 the page to know that the evaluator did something
7 inappropriately. My complaint is less about numbers and more
8 about actions. And the same fair and impartial process was
9 arbitrarily applied to some and not to others. I don't think
10 you have to look any further, to your point, than the title of
11 this very scoring sheet that says, "Non-identified Team
12 Summary Page per Application" to see that there was certainly
13 different treatment throughout this process between some on
14 both sides at both tables. The issue with me is less about
15 numbers and more about impartiality.

16 Q Do you believe on these non-identified applications
17 that there was -- the evaluators knew who those applicants
18 were?

19 A With 100 percent certainty. How could you not know
20 who it was if you were grading them together?

21 Q Perhaps if they were submitted together?

22 A The very title, the very top of the application
23 talks about the blindness of -- they don't use blind, but it
24 talks about basically them not knowing who it is. It would
25 have to be scored differently.

1 MR. KOCH: All right. No further questions.

2 THE COURT: Any additional defendants in intervention
3 wish to ask questions?

4 Mr. Hymanson.

5 MR. HYMANSON: Thank you, Your Honor.

6 CROSS-EXAMINATION

7 BY MR. HYMANSON:

8 Q Good afternoon.

9 A How are you doing, sir?

10 Q So, sir, in 2000-- in preparation for the
11 application in 2018, how much time did you or your company
12 spend on that application?

13 A I assisted legal counsel in preparing the
14 application for submission, so if you're including that time,
15 weeks.

16 Q Okay.

17 A If not months.

18 Q Weeks, if not months? Okay.

19 A Yeah.

20 Q All right. And who was involved in that process?

21 A I was involved as the managing partner. Our counsel
22 was involved. You know, throughout the process other partners
23 were involved in certain roles.

24 Q Were you involved in the 2014 process?

25 A I was not.

1 Q Okay.

2 A I was an owner, but I was not, no.

3 Q You were an owner. Okay. You are familiar with the
4 2014 process as an owner?

5 A Vaguely. I wasn't managing partner until early
6 2017, so, I mean, other than filling out my portion of the
7 application.

8 Q There's been testimony in this courtroom over the
9 past several days that there's been a strong evolution of
10 change in the cannabis business nationally, internationally
11 and in Nevada. Would you agree from the licensing of 2014 to
12 2018 there were significant changes?

13 A As far as the application process or the -- what you
14 were referring is the industry.

15 Q The industry. Let's start with the industry.

16 A There's definitely industry changes, you know.

17 Q And certainly a lot more competition in 2018 for
18 licenses than there were in 2018 (sic)?

19 THE COURT: Can you rephrase your question? You
20 used 2018 twice.

21 BY MR. HYMANSON:

22 Q 2014 versus 2018?

23 A I would have to look at the number of applicants. I
24 mean, the 2014 application process, if you were involved at
25 all, was pretty competitive.

1 Q And there were double the applicants in 2018. There
2 were over 400 -- 462 applications, weren't there?

3 A Well, double the applications but not the -- I don't
4 believe the applicants were double. You know, people like me
5 that submitted five and were graded all five at the same time,
6 you can't count me five times.

7 Q So you said that you did, while you were doing the
8 application in 2018, you did everything that was required;
9 correct? That was your testimony.

10 A I don't think I -- I did more than what was
11 required, but yeah, I did the required stuff, too.

12 Q You did -- whatever was required you did for the
13 application; right?

14 A Yes.

15 Q Okay.

16 A I mean, I would imagine they scored it, so if you
17 didn't do what was required I would assume you wouldn't get
18 scored.

19 Q Well, I just want to make sure. You testified you
20 did -- you looked at the application and you did whatever you
21 thought was required for the application in 2018; correct?

22 A Yes.

23 Q And some of your applications were different in
24 terms of the information you put forth; correct?

25 A Specific to locale, yes.

1 Q Yes. All right. You didn't hold back on any of
2 those applications, did you? You didn't hold back on any of
3 those applications; right?

4 A Hold back in what sense?

5 Q Well, I know you said you did everything you could
6 with each application and then you said in your testimony that
7 what you submitted was different, given locale. I can presume
8 that you did the best you could with every application. Would
9 that be accurate?

10 A Sure. I think -- I don't want to misunderstand your
11 question and I don't want you to misunderstand my testimony --

12 Q Sure.

13 A -- but you're -- at least to me you're asking if I
14 submitted a floor plan for both. Yes. What I'm saying is the
15 floor plan was different but it was still a floor plan in
16 order to check the box, if that's what you're insinuating.
17 Yeah, I checked the box on every application.

18 Q What I'm insinuating is that you read the
19 application, you spent weeks and months working on it and you
20 did your very best in each application that you filed;
21 correct?

22 A Yes.

23 Q All right. And if you did your very best in each
24 and every application, does it surprise you that each and
25 every application was scored the same score?

1 A Yes.

2 Q What would you do different now that you've seen the
3 scores? What would you have done different in those
4 jurisdictions so as to obtain a higher score?

5 A I don't know that if the process is the same the
6 result would be any different. I don't think it was scored
7 correctly. I don't think I received the correct score not
8 because I missed something on my application, but because I
9 don't think it was scored and the rules were applied correctly
10 to everybody. That's I guess where we're having a difference
11 here.

12 Q Okay. Well, we're not having a difference. I mean,
13 I'll accept whatever you tell us. You're just saying that you
14 think that the evaluation wasn't done appropriately; correct?

15 A Correct. That's a big part of it.

16 Q And you don't take any responsibility for coming up
17 short and not qualifying based on your application itself?

18 A Not at all. I think that the application would have
19 qualified had the process been done correctly the first time.

20 Q Okay. Do you have an approximation of how much
21 money you spent in preparing your application?

22 A I don't.

23 Q While you were attempting to do everything that was
24 required, you said you hadn't even -- you weren't familiar
25 with the Governor's Task Force?

1 A Yes. I've never seen it.

2 Q Did you attend any of those open hearings while they
3 discussed applications and the cannabis process?

4 A No.

5 Q So do you consider yourself -- perhaps you came up a
6 little short in terms of giving yourself the best opportunity
7 to gather information that would benefit you in going forth
8 for a license in 2018?

9 A Because I didn't attend the meetings?

10 Q Sure. You didn't get -- you didn't go out and get
11 the best information that was available as this whole process
12 was developing.

13 A I read the statute, I looked at the administrative
14 code that the Department put forward and I matched it up with
15 the application that I spent a month and a half on. I'm not
16 really certain how attending some meeting for, you know, a
17 government task force would have done anything different. I
18 don't think I would have.

19 Q So as you sit here today, do you take any
20 responsibility for coming up short on the licensing, or do you
21 blame the State for not applying the regulations or the rules
22 properly?

23 MR. CRISTALLI: Objection. Argumentative.

24 THE COURT: Overruled. You can answer.

25 THE WITNESS: Repeat the question. I'm sorry.

1 BY MR. HYMANSON:

2 Q Yeah. I want to know if you and your company take
3 any responsibility for coming up short in the qualification
4 process for the licenses, or do you simply blame the State of
5 Nevada for not doing a good enough job for you to qualify?

6 A Given the -- what seemed like, as the applicant with
7 experience on the competitive application forefront, given the
8 flaws in the process I don't find any flaw with my team and my
9 application.

10 Q So you and your --

11 A There's obvious flaws on the State's side or I don't
12 think I would be here.

13 Q So your evaluation is that you and your team are
14 flawless?

15 A I'm sure we could look back and -- I mean, flawless
16 wouldn't be something that I would use as far as a term, but I
17 can say, you know, as a Monday morning quarterback and a
18 Saints fan, I'm certainly going to blame it on the referee.

19 Q Let me cut to the chase.

20 THE COURT: It happens a lot lately.

21 BY MR. HYMANSON:

22 Q Let me cut to the chase, like the Saints fans do.
23 What do you want?

24 A I want the five licenses I applied for.

25 Q The Saints wanted to go to the SuperBowl. But

1 that's what you want, that's why you're here, you want the
2 five licenses that you didn't qualify for?

3 A Yeah. I think if the Saints -- if the referees were
4 a government entity, hopefully they would be in a little
5 better position.

6 Q So you want the five licenses?

7 A Yes.

8 Q The current licenses that you hold -- you're in
9 business; correct?

10 A That's correct.

11 Q And you're making a profit?

12 A Yes.

13 Q And as to the license that you don't have, you're
14 not being irreparably harmed, are you, because you don't
15 qualify for them at this point?

16 A I think there's certain irreparable harm in the
17 opportunity that I would suffer or that I'm suffering through
18 in not being able to, you know, build what I want to build.

19 Q But as you sit here today, you have no irreparable
20 harm as a result of not qualifying for a license?

21 A I -- if I had qualified for a license, I would be in
22 a better position than I am today, so I'm not sure how you
23 could say there's, you know, no irreparable harm.

24 Q I'll refer you to the Saints.

25 MR. HYMANSON: No further questions, Your Honor.

1 THE COURT: Let me ask a few questions before we
2 have redirect.

3 THE WITNESS: Yes, ma'am.

4 THE COURT: On your LOIs for the five different
5 locations, do those have an expiration date?

6 THE WITNESS: I don't have them in front of me, Your
7 Honor, but I believe that most of them were good for a certain
8 period. I don't know what that period was.

9 THE COURT: Do you know if that period has expired?

10 THE WITNESS: Not on all of them. Not on all of
11 them.

12 THE COURT: Okay.

13 THE WITNESS: I know on one it has for sure.

14 THE COURT: So it's expired on one and the others
15 you're not sure?

16 THE WITNESS: Yes, ma'am.

17 THE COURT: All right. Thank you.

18 Redirect.

19 MR. CRISTALLI: Your Honor, I am going to redirect
20 Mr. Viellion, but Mr. Parker wanted an opportunity to ask some
21 questions and we have no objection to him doing that.

22 THE COURT: Mr. Parker, you're out of order.
23 Remember, you were supposed to go --

24 MR. PARKER: I don't mind going after.

25 THE COURT: I asked all of the plaintiffs and you're

1 a plaintiff.

2 MR. PARKER: They were things that came up during
3 cross.

4 THE COURT: Even though Hymanson is sitting next to
5 you and keeps confusing me.

6 MR. PARKER: I know he does.

7 THE COURT: All right.

8 MR. PARKER: That's part of Phil's game.

9 THE COURT: Would you like to ask some questions?

10 MR. PARKER: Just a few.

11 THE COURT: Mr. Parker, that would be lovely.

12 MR. PARKER: Thank you.

13 MR. GENTILE: Actually, those questions were the
14 ones he was going to ask Fridland.

15 MR. PARKER: Stipulate, Your Honor.

16 Can we put up Exhibit 5, Shane, page 21.

17 THE COURT: The version of Exhibit 5 that is in the
18 court's record?

19 MR. PARKER: I like the one that he was talking
20 about earlier. Is that the one in the court's records?

21 THE COURT: I told you guys which one is in the
22 court's record so somebody can straighten that out.

23 MR. PARKER: So that's the one. So could you
24 highlight for me, Shane, the --

25 THE COURT: What is the Bates number on that one?

1 I want to make sure we're on the same page.

2 MR. PARKER: Shane, what is the Bates number on
3 that?

4 I.T. TECHNICIAN: 32

5 MR. PARKER: 32, Your Honor.

6 THE COURT: That is not the Bates number on your
7 tab 5. Oh, page 21 of 34, it might be. Hold on.

8 MR. PARKER: Yes. I want to make sure we're
9 correct.

10 THE COURT: Hold on a second. Yes, that is the
11 correct version. Thank you.

12 MR. PARKER: Thank you.

13 Now, if you could highlight that section again for
14 me, please.

15 THE WITNESS: Sir, do you remember what book that
16 was in?

17 MR. PARKER: You know, I think it's the first book.

18 THE WITNESS: This one?

19 MR. PARKER: Volume 1, Exhibit 5. And go up to the
20 section we were on a little while at the top. There we go,
21 right there.

22 THE COURT: And, sir, you may be able to read it on
23 the screen since they blew it up for you.

24 THE WITNESS: Yes, ma'am. Thank you.

25 //

DIRECT EXAMINATION

BY MR. PARKER:

Q All right. Are you ready?

A Yes, sir.

Q What's your last name again, sir?

A Viellion.

Q Spell it.

A V-(as in Victor)-i-e-l-l-i-o-n.

Q Viellion. Can I call you Mike?

A Please.

Q Thank you. So, Mike, it says here within the parenthetical, it says, "This must be a Nevada address and cannot be a P.O. box." Did any of your five proposed locations include a P.O. box?

A No. They were all physical addresses, specific -- site specific addresses.

Q Is it your position that any applicant that included a P.O. box as their proposed address should not have been scored and should not have been awarded a conditional license?

A Yes. It's my position that anybody that didn't submit a complete application shouldn't have been scored.

Q And would you believe that someone was treated impartially, maybe someone like you who actually provided an address as opposed to a P.O. box, if that applicant was scored and given a conditional license?

1 A If you follow the statute and the regulations, one
2 applicant followed the statute and the regulations and one
3 applicant did not and both applicants were scored, I would not
4 think that as an impartial process.

5 Q Would you consider that arbitrary and capricious?

6 A I'm not sure I understand the exact definition of
7 arbitrary and capricious, but it seems so.

8 Q All right.

9 MR. PARKER: Now, let's leave that up for a second,
10 Shane.

11 BY MR. PARKER:

12 Q Mike, give me a little more background and provide
13 it to the Court. Let me just tell you that the Court is very
14 familiar with construction litigation, but this is more for
15 the record.

16 THE COURT: Let's not talk about RFIs again, okay?

17 BY MR. PARKER:

18 Q So, if you could explain to the Court what it takes
19 to put together a plan, or if you're using a floor plan what
20 it takes to determine whether a floor plan will be adequate
21 for this type of business.

22 A Well, I think obviously with the help of
23 professionals in terms of architects and designers we have
24 built a model that we particularly like in our current
25 location, and what we've done is when you secure a site from a

1 retail standpoint you can either -- most times, unless it's a
2 ground-up build to suit, which is hard to do in 12 months, you
3 can pick a location that's important to you or pick a building
4 footprint that's important to you. You don't oftentimes get
5 both.

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

14 Q Exactly.

15 A So, you know, you spend a lot of time adapting
16 certain situations or certain locations to the situation that
17 fits your retail model. You know, in our case our retail
18 model is 3,500 square feet, plus or minus, you know, of retail
19 floor space.

20 Q Now, when you decide on a location per jurisdiction,
21 did you have any concept in mind in terms of what floor plan,
22 what location, what site would fit best in that jurisdiction?

23 A So I had exact locations, but I'm of the philosophy
24 look for the location not the building layout. So, you know,
25 it's going to take someone like me, you know, that's looking