

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

APPELLANT'S APPENDIX – VOLUME 33

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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
47	Preliminary Injunction Hearing, Defendant's Exhibit 5049 Governor's Task Force for the Regulation and Taxation of Marijuana Act Meeting Minutes	n/a	AA 011634 - AA 011641
47	Register of Actions for Serenity Wellness Center, LLC v. State of Nevada, Department of Taxation, Case No. A-18-786962-B	n/a	AA011642 - AA 011664
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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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Counsel for GreenMart of Nevada NLV LLC

/s/ David R. Koch

Koch & Scow

1 for specific locations a great deal of time longer to secure a
2 piece of real estate because I'm going to have more limited
3 options.

4 Q Okay. And so let's address that for a second. And
5 I want you to think about this. This is something you
6 probably do in your sleep, almost. This may have taken months
7 for you, but I want you to think about it conceptually for a
8 person who has no real experience in construction or one out
9 of six people who only may have some construction experience,
10 okay. And you may not have been here through all of the
11 testimony.

12 A One out of six?

13 Q Well, there were six evaluators. Did you know that?

14 A Oh, on the evaluation side. I was present for a
15 little bit of that testimony.

16 Q Well, we've learned that there were six evaluators,
17 two administrative people helping those six evaluators. And
18 based on Mr. Plaskon's testimony, only one that he could
19 recall that had any perhaps construction background, okay, or
20 experience. So I want you to walk us through your process so
21 that we can have an understanding as a group and on the record
22 why it should have taken longer than two hours to figure out
23 if each of your five locations were adequate or should have
24 been scored identically across the board. Do you understand?

25 A Yes, sir.

1 Q All right. So see if you can help me with this.

2 A I mean, it would be -- the best, most educated,
3 experienced expert in the world couldn't do it in 20 minutes.
4 I think that specifically with regard to the security plan, if
5 you didn't have any experience on either the operation side or
6 the construction side -- you know, there's different
7 requirements for how you build a vault, what qualifies as a
8 vault, especially in an industry where you're trying to
9 protect the product and the cash, you know, And obviously
10 since this industry isn't banked, there's plenty of cash.

11 And I don't know how you could -- anybody can look
12 at a floor plan, right? It's like looking at an exhibit, you
13 just tell me what, I pick it up and I'm like, okay, it's a
14 square and it's got a retail -- you know, it's got a retail
15 station in it. But if you're evaluating it in terms of the
16 detail that the application required or requested, but really
17 required in my eyes, then you would need to know how that
18 operation flowed. So if you're not familiar with any
19 operation in this industry or you're not familiar with both
20 operation and construction, you're just basically looking at a
21 coloring book.

22 Q Thank you. And so from a security standpoint, and
23 we're talking protection from the seed to sale, someone would
24 have to be at least knowledgeable enough in the construction
25 business or in the security business to look for locations of

1 monitors, how you're going to protect cash, how you're going
2 to protect the product and how that all works within 3,500 to
3 4,000 square feet using your model, is that correct?

4 A Absolutely. I mean, it starts with the entrance,
5 right? How can people get in and out? You know, if you
6 didn't look at the windows, you know, if you didn't look at
7 the windows on the site plan, if you didn't know what a window
8 was when you look at a site plan, you wouldn't know that that
9 would be a point of entry. If you didn't know how to look at
10 a site plan and say, oh, you know, the rectangle with the line
11 through it is a window.

12 Q Right.

13 A To properly evaluate especially security criteria in
14 this industry, you have to know all the points of entry, exit,
15 the camera coverage and the location of the vault in terms of
16 inventory and the vault in terms of money. I mean, that's
17 what I do on a daily basis.

18 Q Right.

19 A In my own company now it's still important. So to
20 -- you could not do that in 20 minutes, much less all five
21 steps. There's no way.

22 Q Would you agree with me that if someone actually had
23 the experience to do what you just described, that there is no
24 way on God's green earth that you would have the same exact
25 scores for all five locations?

1 A Impossible.

2 Q And if it's impossible, knowing what you know about
3 construction, do you believe that anyone in terms of an
4 evaluator could have given this a thorough review of all five
5 locations within 20 minutes?

6 A No.

7 Q Could you even determine if each location within
8 each jurisdiction was perhaps an appropriate location in 20
9 minutes?

10 A You mean appropriate in terms of separation distance
11 and all that good stuff?

12 Q All of that stuff.

13 A No.

14 Q Could you determine whether or not among your non-
15 identified portion of the construction adequacy of your model
16 or layout how to judge someone else's who had a P.O. box? Is
17 there even a comparison if someone has a P.O. box?

18 A I mean, if it's not site specific, I don't know how
19 it was considered, but notwithstanding, I guess to answer your
20 question, no.

21 Q Let me -- and this is something that Mr. Hymanson
22 made me think about because he asked you to look inward and
23 reflect back on what you could have done differently. I want
24 you to think about your two locations within I think the City
25 of Las Vegas that you were considering.

1 A Yes.

2 Q Would you judge those exactly the same?

3 A No. If they were exactly the same, I would have
4 only applied for one.

5 Q Thank you. So --

6 A And save the \$5,000.

7 Q Thank you. So is there any way, in your opinion,
8 that someone with any construction experience could first have
9 done a review of all five of yours within an hour or two --
10 number one?

11 A All five? No.

12 Q And then number two, grade all five of those
13 considering site location, security plan, ingress and egress
14 considerations and come up with the same exact scores of all
15 five?

16 A No.

17 Q Impossible?

18 A Impossible.

19 Q Would you agree with me that that, without using --
20 and I know you went to law school, but without using any legal
21 terms of art, do you think that's an example of how the
22 process was simply not conducted fairly?

23 A I think if -- in order to be fair and impartial in
24 any -- forget the law school background and the construction
25 background where it applies more in my life --

1 Q Right.

2 A -- everybody has to be given the same information
3 and submit the same information. I mean, I don't see how --
4 even if they were given the same information, if they didn't
5 submit the same information it can't -- you're just not
6 comparing apples to apples.

7 Q And just to touch upon something asked of you by Ms.
8 Haar, do you recall seeing anything in terms of guidelines or
9 training or helpful hints, be it the Governor's Task Force
10 information that was thrown in front of you for a few minutes
11 or anything that we've gone through up to now that told you
12 how to design from a construction standpoint these locations,
13 be it size, be it footprint, be it security layout? Did you
14 see anything, a sample set of drawings, for example, anything
15 like that?

16 A I don't recall. I don't think -- I mean, we
17 received helpful hints in some email forms, but it wasn't
18 anything to do with --

19 Q Construction?

20 A -- anything other than fill out the application and
21 don't forget checking your boxes.

22 Q Have you seen anything that suggests to you that an
23 evaluator was given a sample set of plans, something to judge
24 your set of floor plans with to determine if your floor plans
25 were adequate, anything like that?

1 A No.

2 Q So if the evaluators, one of six who may have had
3 some construction experience, had not even a sample floor plan
4 to use to compare yours to, do you believe for a second that
5 they could have evaluated your five locations fairly?

6 A No.

7 MR. PARKER: That's all I have. Thank you so much.

8 THE COURT: All right. Now redirect.

9 MR. CRISTALLI: Thank you, Your Honor.

10 REDIRECT EXAMINATION

11 BY MR. CRISTALLI:

12 Q Mike, once you lose a piece of real estate, for the
13 most part it's usually gone; right?

14 A Yes, generally speaking.

15 Q A piece of real estate is unique; correct?

16 A Yes.

17 Q And once it's gone, usually you can't get it back?

18 A Correct. I try not to think about those times,
19 though, but yes.

20 Q You were asked on cross-examination, I believe by
21 Mr. Hymanson, with regard to the Task Force and that maybe you
22 should have been a little bit more diligent in going to the
23 Task Force to get information that apparently wasn't on the --
24 wasn't in the statute, which was the ballot initiative passed
25 by the people. What, again, did you rely on in coming up with

1 the conclusion that you had to have locations, specific
2 locations for each jurisdiction that you applied in?

3 A I relied on the different points in the application
4 and the statute and the administrative code.

5 Q Which, the statute and the administrative code
6 specifically stated you had to secure a location in the
7 jurisdiction that you were applying in, specifically you had
8 to secure letters of intent, at least?

9 A I mean, yeah, it didn't say letters of intent, but I
10 think it basically said you had to have written permission to
11 use the property. I forget the words.

12 Q Nowhere in the application or during the course of
13 the application process from the Department of Taxation were
14 you ever notified that all you needed was a P.O. box?

15 A No.

16 Q And you were sitting here during the testimony of
17 John Ritter. First of all, you know John Ritter?

18 A I do, yes.

19 Q Okay. You were here during his testimony or a
20 portion of his testimony?

21 A Portions of it, yes.

22 Q Where he testified that he was advised by the
23 Department of Taxation that he did not have to have a location
24 and that a P.O. box was sufficient?

25 A I -- yes, I believe he did say that. I can't recall

1 exactly what day, but I think I heard it.

2 Q And nobody from the Department of Taxation issued
3 anything in writing to you or to your company that suggested a
4 P.O. box would be sufficient?

5 A No.

6 Q Okay. Licenses have value; right?

7 A Yes.

8 Q We talked a little bit, I think, during the course
9 of the testimony up to this point that licenses could be
10 valued around \$10 million apiece.

11 A Sure.

12 Q So would you assign a value to the licenses that you
13 did not get during the course of this application process?

14 A I think for me it's more of a brand-building
15 exercise and an industry growth exercise that can't be
16 replaced, in my mind, if others are first to market with ten
17 or eleven licenses like they were awarded. That's where the
18 value is on my side.

19 Q And if we could, because Mr. Parker had referenced
20 this, again if we could pull up 5008, and specifically his
21 criteria sheet, which is 402 to 406.

22 A Which one was that in? Oh, we can just do it on
23 here. That's fine.

24 Q Yeah. On the bottom under the total score in regard
25 to the time and the building construction under the first

1 evaluator, you talked about 20 minutes. It appears that this
2 particular evaluator spent how much time in regard to building
3 construction evaluation?

4 A Fifteen minutes on five applications, I guess is how
5 that calculates out.

6 Q It seems to calculate out that way.

7 A Three minutes an application.

8 Q You didn't have, Mike, as we talked a little bit
9 about, you know, being involved in fair bidding processes in
10 the construction world, everybody being on equal footing, you
11 didn't have the answers to the questions in this application,
12 did you?

13 A No.

14 Q You were going on the information that was provided
15 to you in the application and trying to do your best to
16 address the specifics as elated to each requirement in that
17 application?

18 A Yes.

19 Q One of which was specific locations and the specific
20 details with regard to building plans, budget pro formas and
21 associated information relating to that?

22 A Yes.

23 Q Is there any doubt in your mind that in order for
24 the evaluators to come up the same score for five different
25 applications with different information in those applications

1 that they had to have shared information with regard to your
2 application or applications?

3 A I'm sorry, I don't understand the question.

4 Q You got the same score in all five --

5 A Shared. Yeah.

6 Q -- all five of your applications --

7 A Yes.

8 Q -- and in each jurisdiction you applied in?

9 A Correct.

10 Q You provided different information in those
11 applications?

12 A Yes.

13 Q Any doubt in your mind that the examiners had to
14 share information in order to come up with that conclusion?

15 A I guess if you get past the assumption that they
16 even looked at it in three minutes, yes.

17 Q Mr. Koch came up here and referenced I think his
18 client, Lone Mountain. I believe they had 13 applications and
19 they were awarded 11 licenses. And it appears based on his
20 calculations and his tally sheet that they spent 11 minutes,
21 the evaluators, on each one of his client's applications. If
22 the applicant was following the rules set forth in the NRS and
23 in the administrative code and in the application, would there
24 be any way possible for the evaluators under a blind process
25 to come up with the same score in the time that was allotted

1 for his client?

2 A I mean, not knowing how many pages those
3 applications were, but assuming they were around the same --
4 I mean, that would be a good question. I'd like to know how
5 many pages they are to answer the question. But just making
6 the assumption that they were around the same 200 as mine,
7 absolutely not.

8 MR. CRISTALLI: No further questions, Your Honor.

9 THE COURT: Any of the defendants or defendants in
10 intervention have any additional questions?

11 Ms. Haar.

12 MS. HAAR: Yes, Your Honor. I figured out the issue
13 with Exhibit 5. It is not the application that was sent out
14 by the Department of Taxation and not the application that was
15 applied on.

16 THE COURT: Well, it was stipulated into evidence as
17 that by all parties.

18 MR. HAAR: It was.

19 MR. KEMP: Your Honor, we just looked up the
20 application.

21 MR. KOCH: The application is online.

22 MR. KEMP: Yeah, we just looked it up online and
23 that's the one online. The one she's using apparently is
24 either --

25 THE COURT: I'm just telling you that Exhibit 5 was

1 stipulated into evidence by all of you. If you want to
2 supplement with 5A with something else, I'm happy to take it,
3 but Exhibit 5 you all stipulated into evidence.

4 MS. HAAR: In the interim to close the loop, I have
5 Attachment A of GBS's actual application, Bates labeled DOT-
6 GBSNV000008 through 15 that I would like to move to admit as
7 an exhibit.

8 THE COURT: Do you have a copy?

9 MS. HAAR: I only have an electronic copy. I will
10 bring --

11 THE COURT: It doesn't work.

12 MS. HAAR: May I approach the witness with the
13 electronic copy and ask --

14 THE COURT: Nope. So is it in somebody else's
15 binder?

16 MR. KOCH: Use 20.

17 THE COURT: It's number 20?

18 MR. KEMP: It's not an exhibit?

19 MR. KOCH: 20 is an application. It's MM's
20 application. It has the same information. Can we print it
21 out? If we can take a quick break.

22 THE COURT: Well, if you have a printer, that's
23 great. This is a nice place for our afternoon break.

24 MR. KOCH: I need to go to the bathroom quickly.

25 THE COURT: But I've got to have a hard copy.

1 MS. HAAR: Yes, Your Honor.

2 THE COURT: Because you guys decided not to do your
3 electronic exhibit protocol, which makes my life more
4 miserable.

5 This is a requested recess.

6 MR. KEMP: Your Honor, can I make one clarification?
7 I consulted with Mr. Gentile and we've cut our five days down
8 to two, two more days after Friday.

9 THE COURT: Okay.

10 MR. GENTILE: And I am available on the 11th.

11 THE COURT: Privilege log, quality control notes and
12 scheduling are to be discussed before you leave here today.

13 (Court recessed from 2:56 a.m. until 3:07 p.m.)

14 THE COURT: All right. Are you guys ready?

15 Sir, you're still under oath.

16 Did we find our Exhibit 5A?

17 MS. HAAR: We are doing a Proposed State's Exhibit
18 20019.

19 THE COURT: Okay. Ms. Clerk, do you have Proposed
20 2019?

21 The witness has Proposed 2019. Let's go.

22 Thank you, Ms. Haar.

23 Any objection to 2019?

24 MR. CRISTALLI: I'm going to just leaf through. The
25 one in my hand is the 2019.

1 THE COURT: I have no idea.

2 (Pause in the proceedings)

3 THE CLERK: Is it admitted?

4 THE COURT: I'm waiting for a stipulation.

5 MR. CRISTALLI: Yes. So stipulated.

6 THE COURT: It'll be admitted.

7 (Defendants' Exhibit 2019 admitted)

8 THE COURT: Now it's admitted. You can just play
9 it.

10 CROSS-EXAMINATION

11 BY MS. HAAR:

12 Q And so this is Attachment A to GBS's recreational
13 marijuana establishment application?

14 A Yes, ma'am.

15 Q And just to close up where we started earlier, can
16 you please read the complete sentence of the second box.

17 A "Marijuana establishment's proposed physical address
18 if the applicant owns property or has secured a lease or other
19 property agreement. This must be a Nevada address and cannot
20 be a P.O. box."

21 Q Thank you. And so that says a physical address is
22 required if the applicant owns the property and therefore was
23 not a requirement for all applicants? It simply says "if."

24 A In this instance it says "if," but the statute and
25 the Administrative Code are clear.

1 Q And this was your application that said "if"?

2 A I didn't fill out the actual -- like when you say
3 type, I didn't actually type the application.

4 Q But this is GBS's application?

5 A This is my application, yes.

6 MS. HAAR: Thank you. No further questions.

7 THE COURT: Any other defendants in intervention
8 have any additional questions?

9 Mr. Cristalli.

10 MR. CRISTALLI: Yes, Your Honor. Thank you.

11 We could put that exhibit back up, 2019.

12 (Pause in the proceedings)

13 THE COURT: Okay. It's up.

14 REDIRECT EXAMINATION

15 BY MR. CRISTALLI:

16 Q Okay. If we could just highlight it.

17 Mike, the newly admitted 2019 Attachment A of the
18 application states, "Marijuana establishment's proposed
19 physical address if the applicant owns property or has secured
20 a lease or other property agreement. This must be a Nevada
21 address and cannot be a P.O. box"; correct? That's what it
22 says?

23 A Yes.

24 Q It says it can't be a P.O. box.

25 A Yes.

1 Q Okay. And on this one it says, "Marijuana
2 establishment's proposed physical address if the applicant
3 owns property or has secured a lease or other property
4 agreement." That's what it says; right?

5 A Yes.

6 Q So they -- it appears to be on this particular
7 version of Attachment A that the requirement to disclose
8 location is only if the applicant owns property or has secured
9 a lease or other property agreement. Is that fair to say?
10 That's what the language is. Am I reading it --

11 A The language in statute and the Administrative
12 Code is in direct conflict with the word "if." But that
13 definitely --

14 Q Well, it may be in direct conflict with something
15 else, too.

16 MR. CRISTALLI: Can we put up Exhibit 5.

17 (Pause in the proceedings)

18 BY MR. CRISTALLI:

19 Q Are you looking at Exhibit 5, Attachment A?

20 A Yes.

21 Q And specifically it says, "Marijuana establishment's
22 proposed physical address. This must be a Nevada address and
23 cannot be a P.O. box."

24 A Correct.

25 Q Doesn't say anything about if you secure a location

1 or property address, does it?

2 A No. This is consistent with the statute and the
3 Administrative Code.

4 Q Were you aware that there were two different
5 Attachment As with regard to the applications floating around?

6 A No. Not until three seconds ago.

7 MR. CRISTALLI: No further questions.

8 THE COURT: Anything further from anyone?

9 Mr. Koch.

10 MR. KOCH: I saw that eye roll.

11 THE COURT: It was not an eye roll.

12 MR. KOCH: It was a sigh.

13 THE COURT: It was a sigh.

14 RECROSS-EXAMINATION

15 BY MR. KOCH:

16 Q Mr. Viellion, on a July -- were you on the State
17 list here for retail store license applicants?

18 A I think that the State has a few list serves. I'm
19 not sure -- I'm on some, but I don't think I'm on all of them.

20 Q Yeah. You were on -- you had medical certificates
21 from 2014-15; correct?

22 A Yes.

23 Q Okay. Did you receive an email on July 30th, 2018,
24 with changes, clarifications to the application for the
25 upcoming September retail store application period?

1 A I didn't, but that doesn't mean somebody didn't.

2 MR. KOCH: I'd offer Defendant in Intervention's
3 Proposed Exhibit 5026.

4 THE COURT: 5026. Any objection to 5026?

5 MR. KEMP: Your Honor, I think we need a little
6 foundation from someone at the State as to who they sent this
7 to or didn't send it to.

8 THE COURT: Okay. Well, let's ask the witness if
9 he's seen it before. I don't need to see it for us to see if
10 the witness knows about it.

11 BY MR. KOCH:

12 Q Mr. Viellion, were you on that To State MME, that's
13 medical marijuana establishment; correct?

14 MR. GENTILE: I join the objection.

15 THE COURT: I'm not at the offering point yet.

16 MR. GENTILE: Okay.

17 BY MR. KOCH:

18 Q State MME -- MME refers to medical marijuana
19 establishment?

20 A Okay.

21 Q Do you know if you were on that list, sir,
22 statemme@listserve.state.nv.gov?

23 A I don't know. I mean, I get some emails from some
24 list server, but I'm not sure which one.

25 Q The State medical list server, you're on that,

1 medical marijuana list serve?

2 A Again, I don't know. I just notice the -- all the
3 State's froms come up the same on my email, so I'm not sure
4 what list serves I'm on, which ones I'm not.

5 Q Okay. And have you seen this email that I've shown
6 you as Proposed Exhibit 5026?

7 THE COURT: And, sir, if you're not familiar, just
8 let us know.

9 THE WITNESS: Yes, ma'am. I'm finish reading it.
10 Sorry. I'm not familiar with this, no.

11 MR. KOCH: All right. No further questions.

12 THE COURT: Okay. Anyone else have any additional
13 questions for this witness given the additional questions that
14 have been asked by others?

15 Okay. Sir, you can step down. Thank you. If you'd
16 like, you may remain in the courtroom, you may leave, if you
17 like.

18 Next witness.

19 MR. GENTILE: Steve Gilbert.

20 THE COURT: What is Mr. Gilbert's position with the
21 Department of Taxation so I don't screw this up?

22 MR. GENTILE: It appears --

23 THE COURT: Oh. [unintelligible].

24 MR. GENTILE: Actually, that's going to be one of my
25 first questions, Judge.

1 MR. GENTILE: Come on, Mr. Gentile. You mean you
2 don't know the answer to this?

3 MR. GENTILE: It may have been amended. And I don't
4 -- I'm not on the list serve, so --

5 THE COURT: So when we have to do our little pause,
6 guys, those of you sitting at the defendants' table, what I'm
7 going to do is ask you to push your chairs in and then move to
8 the other side of the room or the audience area so Ramsey can
9 assist the other security officers in remanding this
10 individual safely.

11 MR. SHEVORSKI: Yes, Your Honor.

12 (Pause in the proceedings)

13 THE COURT: Mr. Parker, what time can you start
14 tomorrow?

15 MR. PARKER: Thanks for asking, Your Honor. As
16 early as you would like.

17 THE COURT: Some people are saying not that early.

18 MR. PARKER: Okay. All right. Now, you know I
19 prefer the earlier --

20 THE COURT: How about 9:00 o'clock?

21 MR. PARKER: Sounds great, Your Honor.

22 THE COURT: Are you okay with 9:00 o'clock? I know
23 some of you would be okay at 8:30, but others of you would
24 have trouble getting here then. So 9:00 o'clock.

25 Okay. Dulce, it's 9:00 o'clock.

1 MR. KEMP: Judge, we might have one problem with a
2 witness that I'd like to talk about at some point. It doesn't
3 have to be now, but --

4 THE COURT: I'll put it on my list. What's the
5 witness's name?

6 MR. KEMP: It's Stacy Dougan. It's the person that
7 was --

8 THE COURT: We talked about that person this
9 morning, so now it's on my list again.

10 MR. KEMP: Right.

11 THE COURT: Okay. All right. We'll talk about it
12 in a minute or at the end of the day before I let you go.
13 I've got three things on the list so far. And remember, we
14 try and break at 4:45 so Dulce can do her job and not be too
15 much on overtime.

16 (Pause in the proceedings)

17 MR. KEMP: Judge, I think the witness might need --
18 the next witness we might need a little more time with him.

19 THE COURT: Than what?

20 MR. KEMP: Than just a minute or two.

21 THE COURT: I'm waiting patiently. Can't you tell
22 this my patient judge face.

23 MR. KEMP: I'm not trying to --

24 THE COURT: There is a sign here about what's
25 supposed to happen when I don't have patience to remind me.

1 But this -- I'm patient. I'm visiting with Ms. Higgins.

2 (Pause in the proceedings)

3 THE COURT: Mr. Gilbert, if you'd come forward,
4 please, to the witness stand. As I told counsel, I'll tell
5 you while you're walking up here, we may have to assist
6 another department with a remand of a prisoner, so if we do
7 that, you just stick here close to me, and Ramsey will make
8 sure that we're safe while everybody else steps aside. Okay.
9 Raise your right hand to be sworn.

10 STEVE GILBERT, PLAINTIFFS' WITNESS, SWORN

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

13 THE WITNESS: My name is Steve Gilbert, S-T-E-V-E
14 G-I-L-B-E-R-T.

15 MR. GENTILE: Is the microphone working?

16 THE COURT: I don't know.

17 Sir, you're going to have to scoot up closer to the
18 microphone.

19 DIRECT EXAMINATION

20 BY MR. GENTILE:

21 Q Mr. Gilbert, I'm old and deaf, so I'd like you to
22 keep your voice. Will you?

23 A I will.

24 Q Will you do that for me?

25 A I'll do my best.

1 Q Thank you, sir.

2 Where do you work?

3 A I work for the Department of Taxation at the State
4 of Nevada.

5 Q And how long have you been working at the Department
6 of Taxation for the State of Nevada?

7 A Since July 1st of 2017.

8 Q July 1st of 2017.

9 A That's correct.

10 Q Okay. Prior to that where did you work?

11 A I worked for the State of Nevada Division of Public
12 and Behavioral Health.

13 Q And when did you commence working for the Division
14 of Public Behavioral Health?

15 A In August of 2009.

16 Q Okay. When you were at the Department of Public
17 Behavioral Health -- is that the --

18 A Division of Public and Behavioral Health.

19 Q Okay. When you were there when did you first become
20 involved in your day-to-day work activity with cannabis?

21 A So let me see. That would have been -- in 2010 I
22 became the program officer at the Office of Vital Records.

23 Q The office of what kind of records?

24 A The Vital Records Office.

25 Q Yeah. I thought you said vinyl records, and I know

1 you didn't say that. So please try to keep your voice up.

2 A Yes, sir.

3 Q But I'm not kidding you, I do have some hearing
4 issues.

5 A Yes, sir, I will.

6 So the Office of Vital Records in 2010. And within
7 the Office of Vital Records at that time the patient registry
8 for medical marijuana was being ran through that department.
9 So that was my first exposure to the medical marijuana
10 program.

11 Q Okay. Prior to that, that first year what did you
12 do?

13 A I was a management analyst with the Health Care
14 Quality and Compliance.

15 Q Okay. Now, from the time that you first became
16 involved with medical marijuana did your job title change?

17 A It changed in 2014 when I became a Health Program
18 Manager II with the Division of Public and Behavioral Health
19 for the medical marijuana establishment program.

20 Q Okay. Now, by 2014 medical marijuana was legal in
21 Nevada for about 13 or 14 years by that time, wasn't it?

22 A Yeah. I think it was first approved for patient
23 registry, patient register cards in 2001.

24 Q 2001?

25 A Yes. Can I make a correction?

1 THE COURT: Yes, sir.

2 THE WITNESS: I did leave Division of Public and
3 Behavioral Health for about six months prior to coming back
4 and taking the program manager position in 2014. I went to
5 the Public Employees Benefits Program.

6 Q Still a State employee?

7 A Yes, still a State employee.

8 Q All right. Well, we don't much care what you did
9 until you started getting involved with cannabis, okay.

10 A Okay.

11 Q But tell us your educational background.

12 A I have a Bachelors degree in business administration
13 from --

14 Q From what institution?

15 A California State University San Marcos.

16 Q Okay. And any postgraduate work?

17 A No.

18 Q When did you graduate?

19 A I graduated in 1996.

20 Q So what did you do from '96 to 2009?

21 A I was -- out college, directly out of college I
22 worked for Hewlett Packard as a fiscal accountant. And then
23 I went into sporting goods distribution working for a large
24 distributor of sporting goods on the wholesale level. I
25 was --

1 Q In California?

2 A Yeah, in California.

3 Q Okay.

4 A I was an account manager, account representative,
5 and I worked my way up to national account manager working out
6 of Reno.

7 Q And then in '09 you came to Nevada?

8 A Yeah. Yeah. In 2009 I was -- unfortunately lost my
9 job due to the economy. Did a few jobs, and then finally
10 landed at the State in 2010 -- 2009. I'm sorry.

11 Q All right. Let's talk about 2014. 2014 there was a
12 legislative enactment -- actually '13 there was a legislative
13 enactment, and 453A was amended a great deal; am I correct?

14 A Yes, that's correct.

15 Q Okay. What did you have to do, and I mean you as an
16 individual, what activities, if any, did you perform that were
17 associated with the passage of 453A's amendments in 2013?

18 A I didn't have any involvement in that. That was
19 prior to me coming back to Division of Public and Behavioral
20 Health.

21 Q Okay. So then when did you go back to --
22 specifically in what year, what month did you go back to
23 Public Behavioral Health?

24 A I think my starting month was March or April of
25 2014.

1 Q Okay. And that is just about the time that things
2 started to get rolling with medical marijuana dispensaries;
3 right?

4 A That's correct.

5 Q So then tell the Court, if you will -- let's just
6 talk about that first nine months in general, and then we get
7 into specifics. What did you do those first nine months as it
8 related to medical marijuana dispensaries and the regulations
9 that followed the statute and things of that nature?

10 A Sure. So when I came on board in March or, around
11 that time frame, they were -- the administrator of DPBH and I
12 guess the bureau chief and others involved were drafting the
13 regulations, 453A at the NAC. I got --

14 Q Let me stop you there for a second.

15 A Sure.

16 Q Were they doing it themselves?

17 A They were doing it with the help of a contractor by
18 the name of QuantumMark.

19 Q And that QuantumMark contractor -- did you have
20 anything to with the selection of QuantumMark?

21 A I did not.

22 Q And with regard to QuantumMark's work how long did
23 QuantumMark work before it produced a set of at least proposed
24 regulations?

25 A That I'm not sure, because I wasn't there when they

1 started. I'd have to go back -- I'm not sure when the regs
2 were codified in 2014. I'd have to go back and look at the
3 date when they were codified. I think it was in early 2014
4 that they were codified.

5 Q Okay. Did you have anything to do with creation of
6 those rights? Were you working with QuantumMark?

7 A No. No, I wasn't.

8 Q So you wouldn't know what kind of directions or
9 limitations were given to QuantumMark as it was going through
10 the creation of those regs, would you?

11 A No, I wouldn't. My only involvement in that process
12 was I think a stakeholder meeting, and I forget the date of
13 that. And that was towards the end of them wrapping them up
14 and probably submitting them to the -- I think they go to the
15 Health Board first. I'm not sure whether those regs go to
16 DPBH first for approval.

17 Q Okay.

18 A But I wasn't -- I didn't know their scope. I wasn't
19 involved in the preparation of their contract or anything like
20 that.

21 Q And you weren't involved in the preparation of the
22 regs?

23 A No.

24 Q Okay. So basically your first contact with the
25 regs, would it be fair to say, was when they became enacted?

1 A Yeah. That's -- the workshop that I attended, my
2 superior at the time asked me to read sections just to get
3 kind of anointed with the process. So I guess that would be
4 technically probably my first experience with those
5 regulations.

6 Q All right. So you weren't experienced with anything
7 with regard to the regulation of marijuana at that time.

8 A No.

9 Q That's fair to say, isn't it?

10 A Yes. Besides the patient registry regulations.

11 Q Okay. And you didn't have any information or
12 knowledge or expertise to be able to criticize those proposed
13 regulations, did you?

14 A No. No, I didn't.

15 Q We can agree to that?

16 A Yes, we can agree.

17 Q Okay. So you accepted them as gospel; right?

18 A Yes.

19 Q Okay. Now, how long did you remain involved with
20 the medical marijuana business, I will call it, in Nevada?

21 A I was DPBH, the medical marijuana program, until I
22 was transferred over to the Department of Taxation in July of
23 2017.

24 Q Okay. Now, did you have any involvement at all with
25 regard to the ballot initiative Question 2 that was enacted

1 that led to where we are today?

2 A I did not.

3 Q Did you vote on it?

4 A I did.

5 Q Okay. Not going to ask you how.

6 A Okay.

7 Q And --

8 THE COURT: Good. 'Cause I wouldn't let you.

9 BY MR. GENTILE:

10 Q But you at least -- let me ask you this. When you
11 voted on it did you read it?

12 THE COURT: Mr. Gentile, you can't ask him about
13 what he voted.

14 MR. GENTILE: I didn't ask how he voted. I asked
15 him if he read it when he voted on it. He's already said he
16 voted on it.

17 THE WITNESS: Yes. I did read it.

18 BY MR. GENTILE:

19 Q Okay. Did you understand it?

20 A Yes, I did.

21 Q Okay. And you read the whole thing?

22 A Uh-huh.

23 Q Yes?

24 A Yes.

25 Q Okay.

1 THE COURT: That's one of the things they don't tell
2 you, you can't do uh-huh, huh-uh, or nods of the head. You
3 have to give verbal responses.

4 THE WITNESS: Yes, Your Honor.

5 THE COURT: Okay.

6 BY MR. GENTILE:

7 Q All right. And within it there was actually quite a
8 lot. It was the question and then explanations and then
9 basically advocacy positions and all of that. Do you remember
10 that?

11 A I do, yes.

12 Q Okay. When was the last time you read it?

13 A In full? Probably that was the last time.

14 Q When you voted on it.

15 A Yeah.

16 Q Okay. Good. I promised the Judge I'd ask this
17 question, but I was going to ask it anyhow. I'm looking at --
18 it's either Rube Goldberg machine or it's an organizational
19 chart, okay. And it might be the organizational chart of the
20 Marijuana Enforcement Division as of April 30th, 2018.

21 A Okay.

22 Q Okay. Now, you were already working there at that
23 time.

24 A Yes.

25 Q All right. So, if I understand correctly -- by the

1 way, has it changed -- in terms of the chart itself, not
2 necessarily the names in each of these squares, but has it
3 changed much since April of '18?

4 A Like the structure?

5 Q Yes.

6 A No.

7 Q Okay. Good. So would I be correct that Jorge Pupo
8 was the deputy director in April of 2018 and still is?

9 A Yes, that's correct.

10 Q Okay. Was he the deputy director when you started
11 there in 2017?

12 A No, he was not.

13 Q He was not?

14 A He wasn't.

15 Q Okay. Who was your deputy director when you
16 started?

17 A At that time when we came over to Taxation it was
18 Anna Thornly.

19 Q Okay. Now, you said we. Who else came with you?

20 A The whole medical marijuana program.

21 Q I see. So the -- essentially the Marijuana
22 Enforcement Division moved from the Public and Behavioral
23 Health Department to Taxation?

24 A We were the medical marijuana program. We adopted
25 the name or were given the name Medical Marijuana Enforcement

1 Division once we came to Taxation.

2 Q I got you. You answered to a Health Program Manager
3 III?

4 A No. Is that what that chart says? I'm currently
5 now the Health Program Manager III.

6 Q Oh. You are Health Program Manager III.

7 A Yeah. As of middle of January.

8 Q All right. So the boxes haven't changed and their
9 location to each other haven't, but your name has moved up
10 from Health Program Manager II to Health Program Manager III.

11 A Yes.

12 Q All right. And Health Program Manager III, the only
13 supervisor you have is Jorge or George Pupo. And then, of
14 course, the director.

15 A Yes.

16 Q Right? And who is the director?

17 A Currently it's Melanie Young.

18 Q All right. And how many directors have you worked
19 under?

20 A She is Melanie -- Director Young is the third
21 director since we came to Taxation.

22 Q All right. Mr. Anderson preceded her?

23 A That's correct.

24 Q And Ms. Contine --

25 A Yes.

1 Q -- preceded Mr. Anderson?

2 A Yes, that's correct.

3 Q Okay. So when did you move up to become Health
4 Program Manager III?

5 A I was given that opportunity in the middle of
6 January.

7 Q Of this year?

8 A Yes.

9 Q Well, congratulations.

10 A Thank you.

11 Q Now let's talk about 2017 when you moved over. I
12 think you said April. Did you say April, or July?

13 A July.

14 Q July. Okay.

15 A July 1st the budget switched.

16 Q All right. So by that time the statute had been
17 enacted, right, the ballot initiative passed, and, according
18 to our Constitution, it immediately became law. But there
19 weren't any regulations yet; right?

20 A That's correct.

21 Q Okay. And you've already said that you had nothing
22 to do with the creation of regulations for medical marijuana.
23 What, if any, activity did you have -- and let's focus on the
24 time frame -- in the year 2016 with regard to the creation of
25 regulations? You weren't yet transferred, but did you have

1 any input with regard to the creation of regulations for the
2 marijuana retail program?

3 A For medical marijuana?

4 Q No, sir. Retailed marijuana -- recreational.

5 A In --

6 Q '16.

7 A In 2016. No.

8 Q No?

9 A No.

10 Q Am I correct?

11 A Correct.

12 Q But you were familiar for at least a couple of years
13 with the regulations as it related to medical marijuana?

14 A Yes.

15 Q All right. Now, you knew you were going to testify
16 here at some point. It's my understanding that you were
17 talking to the AGs out there about what was going to happen in
18 here a little bit, and I'm not going to inquire as to that.
19 But when did you first learn that you most likely would be
20 called as a witness in this case?

21 Q Maybe two weeks ago.

22 Q Okay. Since that time -- I'm going to assume that
23 you don't have perfect recall, just like all of us. You kind
24 of wanted to prepare for your testimony, didn't you?

25 A Yes.

1 Q All right. What did you do to prepare for your
2 testimony?

3 A Looked at some documents, looked at, you know, the
4 applications, stuff we had on file.

5 Q Okay. What kind of documents? Tell us about them.

6 A The application itself, the evaluation sheets, you
7 know, some of the announcements that went out, timelines,
8 familiarized myself with, you know, the contractors, you know,
9 the process, refreshed my memory from the 2018 application
10 process, prepared myself like that.

11 Q Okay. We're going to probably go over some of
12 those.

13 A Okay.

14 Q At least with regard to the year 2017 from the time
15 that you started who have you supervised in the medical --
16 excuse me, in the Marijuana Enforcement Division?

17 A Can you repeat the question.

18 Q Yes. You started July 1st, 2017, with the
19 Department of Taxation; correct?

20 A Correct.

21 Q You had been previously working with the Department
22 of Public Behavioral Health and stuff; right?

23 A Correct.

24 Q Okay. And the people that you were working with
25 over there came with you over to the Department of Taxation?

1 A Yes, that's correct.

2 Q Who were they?

3 A Would you like names, or positions?

4 Q Actually, I'd like both.

5 A Okay. I'll do my --

6 Q And if you wouldn't mind, just so that everybody in
7 this room can, you know, get the benefit of this chart, which
8 I'm not going to put in evidence --

9 A Okay.

10 Q -- could you kind of tell us by layers in terms of
11 who your subordinates were.

12 A Sure. So at the Division of Public and Behavioral
13 Health I was a Program Manager II. I reported to the bureau
14 chief. So everybody from my level down was transferred over
15 to the Department of Taxation.

16 So there's myself, I had a supervisor reporting to
17 me. Her name was Kara Cronkhite -- or is Kara Cronkhite.

18 Q And she's still subordinate to you?

19 A Yes.

20 Q Okay.

21 A She's the --

22 Q By the way, who moved into the -- what is this
23 called -- Health Program Manager --

24 THE COURT: Can you let him finish answering this
25 question first.

1 MR. GENTILE: I'm sorry?

2 THE COURT: I'm making a list of everybody who came
3 over and what their positions were.

4 MR. GENTILE: Well, I'm going to help you with that
5 in a second.

6 BY MR. GENTILE:

7 Q When you got elevated to Health Program Manager III
8 who took your spot?

9 A Kara Cronkhite.

10 Q See? Okay. So you are still her immediate
11 supervisor.

12 A Yes.

13 Q Okay. And is there anybody else on the same line as
14 her that you supervise?

15 A No. She would be in the line by herself.

16 Q She's in the line by herself, okay.

17 A For the grade that her position is at.

18 Q Got you. Then there's apparently multiple people
19 that she now supervises that you used to supervise. But tell
20 us who they are.

21 A If I know what you're looking at, it would be the
22 inspectors and the auditors. She currently -- she and -- she
23 supervises the health inspectors --

24 Q Okay.

25 A -- the marijuana inspectors. Damon Hernandez, who

1 now reports to Kara, manages the auditors.

2 Then we have a gentleman named Shandon Snow, who
3 manages the compliance audit investigators.

4 Q Okay.

5 A I have a Program Officer III. Her name is Diane
6 O'Connor. She manages the agent card program.

7 Q All right.

8 A I have another Program Officer III. She's brand new
9 to the position. Her name's Megan. Her name's probably not
10 on that chart. It might be under a different position.

11 Q So you have -- let's see if I have it right.

12 THE COURT: Did Megan come from the Department of
13 Behavioral Health with you, sir?

14 THE WITNESS: No. She was a current Taxation
15 employee.

16 BY MR. GENTILE:

17 Q All right. So let's talk about first just the lines
18 themselves. You are a Health Program Manager III. You
19 supervise Health Care Program Manager II, a Medical Marijuana
20 Program Supervisor, and a Chief Investigator Compliance
21 Auditor.

22 A How it's structured now is my only direct report is
23 the Health Program Manager II.

24 Q Okay. And the others report to her?

25 A For the field staff. Diane O'Connor, the Program

1 Officer III over the program -- or the agent card program
2 still reports to me.

3 Q Let's go back to 2017. Who was reporting to you
4 then?

5 A Kara Cronkhite. At that point she was a supervisor,
6 marijuana supervisor. A gentleman named Jeff Hanson. He was
7 the Program Officer III that is currently held by Diane.
8 Molly Walt, who is a Program Officer III, who's -- Megan is
9 currently in that position. I think that's it.

10 Q Okay. Now, when, if ever, did you become involved
11 in the creation of or -- when I say become involved I mean --
12 that's a very broad term, okay. When did you become involved
13 with the creation of temporary regulations with regard to
14 recreational marijuana?

15 A We --

16 Q I don't want to hear we. I asked you. Singular.

17 A Okay. I wasn't involved in those temporary
18 regulations.

19 Q Ever?

20 A No.

21 Q Okay. They went into effect; right?

22 A Yes.

23 Q All right. And they went into effect because the --
24 because Governor Sandoval basically wanted to get as quick a
25 start as he could with regard to recreational marijuana retail

1 locations. That fair to say? Is it fair to say?

2 A I believe so, yes.

3 Q Okay. But you had nothing to do with that process.
4 Who created those temporary regs as far as you know?

5 A The director at the time at Taxation, which was
6 Deonne Contine.

7 Q Did he do it himself?

8 A Deonne's a female.

9 Q Oh.

10 A So she -- I don't know. We were still over at DPBH
11 at the time. We weren't transferred over to Taxation yet.

12 Q All right. So now, July 1st of 2017 retail
13 marijuana gets started. Am I right?

14 A Yes.

15 Q Okay. And that's just about the time that you got
16 there, and those temporary regs were already in existence by
17 that time.

18 A That's correct.

19 Q Okay. There came a time when permanent regs with
20 regard to 453D, which in turn was the result of the ballot
21 initiative Question 2 that you voted on and read in 2013.
22 When did you become involved, if at all, in the creation of
23 the permanent regs?

24 A I probably became involved in those around maybe
25 June of 2017. Because what Taxation did is they reached out

1 to us and got our input on 453A regulations.

2 Q Right. And 453A was and still is different from
3 453D. Am I correct?

4 A Yes, you're correct.

5 Q 453A did not come into existence as a result of a
6 ballot initiative, it came into existence as a result of
7 legislation; right?

8 A Yes.

9 Q Okay. But the people created 453D.

10 A Yes.

11 Q Right?

12 A With question, yes.

13 Q Okay. So tell us about how you first became
14 involved in the creation of the regs -- in the permanent regs,
15 not the -- you've already that you had nothing to do with
16 those. With regard to the permanent regs you think it started
17 around June of 2017?

18 A Yes.

19 Q All right. When you say you became involved, what
20 does that mean now that we -- I need some definition, some
21 clarity with regard to what your activities were. And let's
22 just talk about the last six months of 2017 to start with.

23 A So when we were officially transferred over to the
24 Department of Taxation -- when I say we, it's the program, the
25 medical marijuana program.

1 Q All those guys you mentioned before.

2 A Right.

3 Q Yeah.

4 A We worked with -- so at that point QuantumMark was
5 on board with Taxation. QuantumMark was contracted by
6 Taxation to assist with the preparation of the new regs.

7 Q But they did the temporary, and now they were still
8 on board to do the permanent; am I right?

9 A I'm not sure if QuantumMark did the temporary. I
10 don't know.

11 Q Okay. You say they did the regs for medical?

12 A Yes.

13 Q Okay. You don't know who did the temporary?

14 A I'm assuming -- I don't. I don't think I should --

15 Q Okay. But you do know that a came on board to do
16 the permanent?

17 A Yes.

18 Q All right. And when did that start, to the best of
19 your recollection?

20 A To my recollection when we got there on July 1st
21 officially they were already on board.

22 Q Okay. And who was it from QuantumMark that you had
23 contact with?

24 A Her name's Kelly -- Kelly Jessie [phonetic], I think
25 it is.

1 Q Okay. And who else was working with -- from the
2 Department of Taxation who else were you working with in
3 dealing with QuantumMark?

4 A Well, I wasn't -- I wasn't the worker with
5 QuantumMark. The director at the time, Deonne Contine --

6 Q I see.

7 A -- was -- and Anna Thornly at the time. I think
8 probably Jorge had some -- Jorge Pupo had some, you know,
9 input in it. And then Kara and myself.

10 Q All right. And to the extent that you had input in
11 it, what does that mean?

12 A They would come to us and ask us what's working --
13 what worked well in medical, what didn't work well. You know,
14 Kara's a registered environmental health specialist, so she's
15 really -- really up on the health and safety of the product
16 and public safety. So they reached out to us for input. They
17 would give us a draft and have us read it.

18 Q Were you guys working with the Deputy Attorney
19 General or any legal counsel from the Department of Taxation
20 when these regulations for recreational marijuana were being
21 created?

22 THE COURT: And, sir, that's a yes or no question.

23 THE WITNESS: I was not, no.

24 BY MR. GENTILE:

25 Q Okay. Do you know if -- as far as you know, there

1 was no lawyer working with the team; is that fair to say?

2 A I wouldn't know yes or no.

3 Q Okay. Now, with regard to your input you've already
4 said the director was involved, Kelly Jessie was involved,
5 Jorge Pupo was involved, you were involved, and somebody else.
6 You mentioned another --

7 A Kara Cronkhite.

8 Q Kara Cronkhite is another. There were five of you.
9 And you were basically -- if I heard you correctly, your role
10 and Kara's was to talk about how medical marijuana regulations
11 had been working. Is that fair?

12 A Yes.

13 Q Okay. What else?

14 A That's really it. So we were given drafts to
15 review, and we would -- we would let them know if it was good.
16 Because what they did is they took 453A and, you know, amended
17 it to fit 453D.

18 Q And what guidelines -- and I'm only asking you in
19 terms of what you know, all right. And I'll follow that with
20 a question depending upon what your answer is.

21 What guidelines or restrictions or guidance was
22 QuantumMark given with regard to any kind of limitations that
23 might have been on them in creating recreational marijuana
24 regs as compared to medical.

25 A I have no knowledge of -- I wasn't in charge of

1 telling them what to do.

2 Q Who was?

3 A I don't know.

4 Q All right. So by the end of 2017 what was the
5 status of the evolution of recreational marijuana regulations?

6 A Can you repeat that question.

7 Q Let me ask it separately.

8 A Okay.

9 Q You know, I'll just ask it. I've got -- I've got
10 the answers here, so I'll ask it.

11 A All right.

12 THE COURT: Are the answers right?

13 MR. GENTILE: I don't know. I got it from a State
14 post, so, you know, you never know. And I'm not a part of the
15 list serve.

16 BY MR. GENTILE:

17 Q Does it sound right to you that on July the 6th of
18 2017, in other words, just a little bit after you went on the
19 Department of Taxation payroll, the Department of Taxation
20 issued a notice of regulatory workshop and posts proposed
21 permanent regulations? That sound about right?

22 A Yeah.

23 Q And those proposed permanent regulations were
24 basically the first go at converting medical marijuana
25 regulations. That sound right?

1 A Yes.

2 Q Okay. Then on July the 24th of '17 the Department
3 of Taxation conducted a regulatory workshop. I'll bet that's
4 what you were talking about earlier.

5 A Actually I was referring to the medical marijuana
6 one.

7 Q Okay. But do you remember this regulatory workshop
8 in July of '17?

9 A Yes, I do.

10 Q Okay. Were you there?

11 A I -- I --

12 Q You don't remember?

13 A I don't remember.

14 Q Okay. Then on September the 6th the Department of
15 Taxation submitted a revised draft of proposed permanent
16 regulations to the Legislative Council Bureau. That sound
17 right?

18 A Yes.

19 Q Did you know that all that was going on --

20 A Yes.

21 Q -- at the time?

22 A Uh-huh.

23 Q You did?

24 A I did, yes.

25 Q Okay. But pretty much your role in all of this

1 hadn't changed yet; am I right?

2 A Yeah, you're correct. Yes.

3 Q Okay. In fact, if I'm hearing you right, it really
4 never changed. But we're going to get to that slowly, okay.

5 A Okay.

6 Q Now, on November 1st the Department of Taxation
7 issued emergency regulation to extend the effective timelines
8 because the Legislative Council Bureau had not approved the
9 text of the proposed permanent regulations that were drafted
10 by QuantumMark. Am I right?

11 A Yes.

12 Q Okay. To your knowledge had QuantumMark been given
13 any instructions with regard to how Ballot Question 2 might
14 affect, might after the creation of these regulations?

15 A I wouldn't have any knowledge of that.

16 Q Then on December the 13th of 2007 the Department of
17 Taxation published Proposed Permanent Regulation R092-17
18 because it got it back from the Legislative Council Bureau.
19 Remember that?

20 A Yes.

21 Q That sound about right when it happened?

22 A Yeah.

23 Q And up until that time, as far as you know, no input
24 had been given to QuantumMark or to anybody else with regard
25 to how a ballot question might affect what they could or

1 couldn't do with regs for recreational marijuana?

2 MS. SHELL: Objection, Your Honor. Mischaracterizes
3 testimony.

4 THE COURT: Overruled. You can answer.

5 THE WITNESS: Yeah. I still don't -- I still don't
6 know what guidance was given to them.

7 BY MR. GENTILE:

8 Q Okay. Now, before that could go into effect, these
9 regs to go into effect it had to go in front of the Tax
10 Commission; right?

11 A Yes.

12 Q Did you attend the Tax Commission meeting?

13 A I think I may have --

14 Q You think you may have.

15 A -- attended that one, yeah.

16 Q That took place on January 16th of 2018. That ring
17 a bell?

18 A Yeah. Sure. I don't -- I don't remember the date
19 of the meeting.

20 Q Well, listen, I don't remember it, either. I'm just
21 going by what the State said.

22 A Okay.

23 Q Could be wrong. State could be wrong.

24 A If that's what's on the Website, that's probably
25 when -- that's when the meeting took place. The Commission

1 meetings don't change.

2 Q All right. And now, before they can go into effect
3 they have to go from the Tax Commission back to the
4 Legislative Commission, right, the Fiscal Commission?

5 A Yes.

6 Q Okay. And they did that on February 27th of 2018.
7 That sound right?

8 A Yes.

9 Q All right. Did you attend that Legislative
10 Commission hearing?

11 A I did not attend that one.

12 Q So you don't know what transpired there.

13 A No.

14 Q Okay. Are you aware that the Legislative Commission
15 asked Legislative Council Bureau if it could have more time to
16 consider these regs, an Legislative Council Bureau told them
17 no because they'll expire and then there'll be no regs?

18 A I was not aware of that.

19 Q So is it fair to say that insofar as you know
20 QuantumMark, along with -- or maybe not -- someone else from
21 the Department of Taxation? You've already explained what
22 your -- can I say limited role was? Is that fair? I don't
23 want to diminish your importance over there, but doesn't sound
24 like you had a lot to do with creating these regs.

25 A Not those -- not that first pass, no.

1 Q Okay. Basically modified the medical regs?

2 A Yes. That's correct.

3 Q And at least as far as you know you don't know of
4 any communications to QuantumMark with regard to what kind of
5 an impact -- what difference there was between how medical
6 marijuana came into being in Nevada and how recreational came
7 into being in Nevada? Far as you know you don't know if that
8 was ever brought to their attention?

9 A I do not, no.

10 Q Since you have moved over -- now, when you were over
11 at the Public Behavioral Health Services enforcement was one
12 of the things that you were aware of over there, enforcement
13 with relationship to dispensaries, medical marijuana
14 dispensaries?

15 A Inspections and audits?

16 Q Inspections and audits and stuff like that.

17 A Yeah, we performed those.

18 Q Okay. And did you do some of those yourself?

19 A No, I did not.

20 Q Okay. Was a good deal -- that's a relative term.

21 I'm going to ask you to put it in your words. Did the
22 Department of Public Behavioral Health and Services obtain
23 information with regard to how various medical marijuana
24 dispensaries were abiding by the rules and regulations? In
25 other words, when they -- when an inspection would take place

1 would a report be created?

2 A Yes.

3 Q Okay. And if somebody was not doing the right
4 thing, not behaving correctly operating a medical dispensary,
5 they'd get written up?

6 A It depends on the severity of the noncompliance, but
7 they would be issued what we call a statement of deficiency
8 outlining where the violations were according to the
9 regulations, and then the facility, the dispensary would
10 submit a plan of correction.

11 Q Okay. When I say written up I meant there would be
12 some sort of a record made of what was seen by the enforcement
13 guys, right, and what action the enforcement officers took.

14 A Yes. There is.

15 Q And so usually what would happen is they would -- if
16 they observed anything at all that was not the way they wanted
17 it to be, not the way they thought the regs required it, they
18 would notify the operator, give him a chance to cure it, and
19 that's usually all it took. Is that fair to say?

20 A Yeah. That's fair to say, yes.

21 Q Okay. And it was rather rare that any kind of a
22 penalty or even a process that might result in a penalty was
23 instituted. Is that also fair to say?

24 A Yes.

25 Q Because they were abiding by -- for the most part by

1 the rules that were -- that the ink wasn't even dry on yet.
2 It was a brand-new industry. Am I right?

3 A Oh, yes. For sure.

4 Q Okay. So by the time 2018 came along -- or 2017, I
5 should say, and 2018 and there was going to be an expansion in
6 the number of licensees, whether by way of the Rapid Start
7 Program or what happened last December, last September through
8 December, in your opinion was there a substantial amount of
9 information in the possession of the Department of Taxation by
10 that time with regard to the compliance friendliness of the
11 people that had been operating medical marijuana dispensaries?

12 A Can you -- can you clarify that question?

13 Q Yeah. Let me make it shorter. By 2017 you had at
14 least three and a half years of reports on inspections with
15 regard to the people that were already licensed; am I right?

16 A Yes.

17 Q All right. And that's what I mean by a good of
18 information. You knew the good guys, and you knew who wasn't.

19 A Yes.

20 Q And there weren't many guys who weren't. They were
21 just not all as compliant as the next guy.

22 A Yes, that's correct.

23 Q And if they hadn't been good guys, if they hadn't
24 been complying, they probably would have been on the wrong end
25 of some kind of a disciplinary action or a revocation. Is

1 that fair to say?

2 A Yes, it is.

3 Q Okay. Now let's talk about 2018. After February of
4 2018 there was now a set of regulations, permanent, for retail
5 marijuana, recreational marijuana; right?

6 A Yes.

7 Q Most of them were the same as 453A; right?

8 A Yeah. Yes. I don't know.

9 Q I mean, there was a little bit of difference,
10 because there's a difference in the operation of a
11 recreational versus a medical dispensary. But except for that
12 they were pretty much the same. Fair to say?

13 A Yes, it is.

14 Q Let me have a moment here.

15 I'm going to get ahead of myself just a little bit.
16 Then we're going to go back to it. But I'm afraid I'll forget
17 it if I don't ask it now.

18 When you were going through -- meaning the
19 Department of Taxation. When you were going through the
20 evaluating of license applications last fall, September,
21 October, November, and up to December 5th, what, if any, use
22 did you make of what was by that time four and a half years of
23 information garnered by your inspectors of the dispensaries
24 that were already in business in Nevada?

25 A Can you be more specific on the information, please.

1 Q The reports that -- by that time you had a four-and-
2 a-half-year history of the people that had dispensaries that
3 were medical marijuana dispensaries; right?

4 A Yes.

5 Q Okay. And by that time you had over a year of
6 history on the people that had medical marijuana dispensaries
7 that were then given, awarded, whatever you want to say,
8 recreational marijuana dispensaries; right?

9 A Yes.

10 Q All right. So some of those -- in fact, all of
11 those operators had at least a four-year track record with the
12 State in terms of inspection reports. Am I right?

13 A It varies, because it depends when that
14 establishment was issued their final certificate. They
15 weren't all issued at the same time.

16 Q Okay. All right. You're right. But the medical
17 dispensaries were issued their licenses in 2014.

18 A They were issued their provisional licenses, and
19 then they had 18 months to become operational.

20 Q Okay. So you had -- would it be fair to say that
21 you had at least a three-and-a-half-year experience with most
22 of the medical and by that time also recreational marijuana
23 dispensaries that were eligible to be applying for the
24 licenses last fall.

25 A Yeah, I think that's fair. The recreational was a

1 little bit less.

2 Q Right. But it was [unintelligible].

3 A Yes.

4 Q Because you couldn't get one unless you already had
5 a medical; right?

6 A That's correct.

7 Q They didn't behave any differently with the
8 recreational than they did with the medical, did they?

9 A No.

10 Q Okay. So you had history. What did you do with it
11 in terms of using it in the evaluating of the applications
12 that were submitted last September?

13 A That wasn't -- that criteria wasn't used to evaluate
14 the applicants. The applicants renew on an annual basis, and
15 if they're currently renewed and in good standing, you know,
16 they're renewed.

17 Q Okay. Thank you.

18 A Uh-huh.

19 Q You're not a lawyer, are you?

20 A No.

21 Q Never question good fortune.

22 With regard to your understanding -- you have been
23 working for government for 10 years; am I right?

24 A Yeah, coming up on 10.

25 Q You've been working for an agency for 10 years;

1 right?

2 A I'm counting in my head. Well, Taxation for two,
3 and then DPBH for about eight. Eight and then almost two for
4 Taxation.

5 Q So eight and two is ten.

6 THE COURT: And what about PERS?

7 THE WITNESS: PERS is six month.

8 BY MR. GENTILE:

9 Q Six months. So you've got to at least have your --

10 A Yeah.

11 Q They're all agencies, aren't they?

12 A Yes.

13 Q Okay. What is your understanding, not as a lawyer,
14 of what an agency can do based on a piece of legislation? Is
15 there limits to what an agency can do with regard to a piece
16 of legislation, basically administering a piece of
17 legislation?

18 A Well, if I understand the question correctly, the
19 NRS is what we're given to execute.

20 Q Right. And you'd have to enact regulations; right?

21 A Yes.

22 Q But you can't do any regulation you want, can you?

23 A No.

24 Q Okay. There are some limitations.

25 A Yes, there are.

1 Q And the legislation, as far as you know -- it's not
2 your job to do that, I get it. Somebody else is in fact doing
3 the regs, but there is a limit to what the regs can do, and
4 that's limited by the legislation itself; right?

5 A Yes. That's my understanding.

6 Q Okay. We can agree that the medical marijuana
7 legislation was not the same as the recreational marijuana
8 ballot question that created the law; right?

9 A I agree, yes.

10 Q Okay. How did you go about -- what, if anything,
11 did you have to do with the creation of the application that
12 was used by the applicants last year that causes all of us to
13 be here?

14 A So my involvement was I took the medical application
15 that was used in 2014, we updated it to comply to NAC 453D,
16 the recreational regs, and my involvement was part of the team
17 updating it, proofing it, working with the team.

18 MR. GENTILE: If I can have just a second here.

19 Do we have the 2014 application? And do we also
20 have the 2018 application? And can we put both of them on the
21 screen at the same time.

22 THE COURT: Which version of the 2018?

23 MR. GENTILE: Good question. Good question. Well,
24 candidly, they both say Version 5.4, so that's not going to
25 help.

1 THE COURT: I'm only worried about admitting the
2 exhibits.

3 MR. GENTILE: I get.

4 THE COURT: So that would be 5 and 2019.

5 MR. GENTILE: You know what, I'm thinking you could
6 put either version up, because I want page 8 of 34 on the
7 2018, and I want page 9 of 45 on the 2014.

8 THE COURT: Mr. Gentile, you have 25 more minutes.
9 How much longer are you going to be with the witness?

10 MR. GENTILE: We won't be done today.

11 THE COURT: Okay.

12 MR. GENTILE: He's --

13 THE COURT: I can always hope.

14 BY MR. GENTILE:

15 Q All right. You see the part on --

16 MR. GENTILE: no, that's the wrong one. That is the
17 wrong one. The one on the right is the 2018? Is the one on
18 the right 2018?

19 UNIDENTIFIED SPEAKER: Exhibit 5, is that the 2018
20 one?

21 MR. GENTILE: Yes. There's two. I'll be darned.
22 It's on a different page.

23 (Pause in the proceedings)

24 MR. GENTILE: I need page 8 of 34. There you go.
25 Okay. Perfect. Lower the -- well, see how much we can get

1 all at once.

2 BY MR. GENTILE:

3 Q All right. That's the 2018 application. Do you
4 recall it? Probably not.

5 A I'm not sure what I'm --

6 Q All right. Let me -- let me -- I've never lied to
7 you before, so I wouldn't start now, okay. Look at the top
8 one. The top one is the 2014 application form. The reason
9 you can see that is because due dates that end in the year
10 2014. Do you see that?

11 A Yes.

12 Q Okay. The bottom one is the 2018, and you could
13 trust me for the same reason, it says that there are due dates
14 for 2018, okay. I have a question for you.

15 The top one on the second line -- first one says,
16 "Request for application pay." Oddly enough, so does the
17 bottom one, first line says "Request for application pay,"
18 okay. But the second one on the top one says, "Deadline for
19 submitting questions." Look at the bottom one. Is there
20 anything there that indicates that you can submit questions in
21 2018?

22 A There is not.

23 Q Okay. How come?

24 A You know, to be quite honest with you, I wasn't the
25 one that made that decision. I don't -- I don't know.

1 THE COURT: So who made that decision?

2 THE WITNESS: I don't know.

3 THE COURT: Okay. Thanks.

4 MR. GENTILE: Okay. Well, that's all I wanted it
5 for, so you could take that down.

6 THE COURT: Good work, Shane.

7 BY MR. GENTILE:

8 Q Were you around in 2014 when that first set of
9 applications was out there for medical marijuana people? Were
10 you working at that department at that time?

11 A Yes, I was.

12 Q Okay. Did people send in questions?

13 A They did. From my recollection the industry was
14 brand-new, there were a lot of questions, because nobody had
15 experience, nobody had experience, you know, in the
16 application process.

17 Q And you invited questions on the form itself?

18 A Yes.

19 Q Okay. There's some language in the -- in 453D and
20 in the regulation relating to 453D -- I'm sorry. I apologize.
21 There's language in 453D as proposed by Ballot Question 2 and
22 then subsequently enacted the day it was adopted by the
23 legislature, which the legislature didn't have any options on.
24 And it talks about the qualifications for someone to be
25 awarded a recreational marijuana license had to be directly

1 and demonstrably related to operating -- to the operation of a
2 marijuana establishment. I'm sure you know that language
3 well.

4 A It sounds familiar, yes.

5 Q Okay. Well, when you say it sounds familiar, I
6 mean, have you read it?

7 A Yes.

8 Q Okay. When?

9 A Numerous times.

10 Q Numerous times. Okay. So you were being -- when
11 you said it sounds familiar you were kind of understating how
12 well you know it?

13 A Yeah. I don't know if it was word for word.

14 Q Okay. All right. So I want to ask you, sir, have
15 you looked at the ballot question recently?

16 A No, I have not.

17 Q Okay. Have you looked at the ballot question
18 anytime in relationship to looking at the regs as they exist
19 now for recreational marijuana?

20 A No, I have not.

21 Q Okay. You have looked at the statute as it relates
22 to recreational marijuana?

23 A Yes.

24 Q Okay. I want to talk to you about diversity.

25 A Okay.

1 Q Because in the application you include diversity as
2 a subpart of organizational evaluations. Am I right?

3 A Yes.

4 Q Okay. Where in 453D do you see diversity mentioned?

5 A In NRS?

6 Q NRS.

7 A It's not mentioned, I don't -- to my knowledge.

8 Q It's not mentioned there. Okay. Where -- in the
9 course of making the determination to put diversity in as a
10 subpart of organizational, the organizational component how
11 did you find diversity to be directly and demonstrably related
12 to qualifications for running a marijuana establishment?

13 MR. SHEVORSKI: Objection. Foundation.

14 THE COURT: Overruled. You can answer.

15 THE WITNESS: Can you repeat that question.

16 BY MR. GENTILE:

17 Q I'll bet I can. In determining to include diversity
18 in the organizational subpart or for that matter any part of
19 the evaluation process for awarding a license how did you find
20 it to be directly and demonstrably related to an applicant's
21 ability to operate a marijuana establishment? What is it
22 about diversity that is connected to the ability to run
23 marijuana establishment?

24 A I'm not sure I'm the expert to mention that, but I
25 wouldn't think it would demonstrate --

1 Q It wouldn't. Thank you.

2 A -- the ability.

3 Q Thank you. You have a section that deals with
4 financial; right?

5 A Yes.

6 Q Okay. The financial section has three subparts,
7 financial statements, first year's operating expenses, and
8 liquid assets; right?

9 A Yes.

10 Q Okay. Now, liquid assets requires that you have
11 \$250,000 liquid. That is the buy in. You don't get
12 considered unless you have that; is that fair to say?

13 A Yeah, that's fair.

14 Q Okay. And a year of operating expenses is something
15 that is calculable based upon the projections of the operator,
16 how big his space is, what he anticipates it's going to cost
17 him to operate, and that's something that's probably
18 calculable by the Department of Taxation based on its
19 knowledge by this time of how much per square foot rangewise
20 and based on location one of these dispensaries should be able
21 to produce a year. That fair to say?

22 A Yeah. That's fair to say, yes.

23 Q Okay. And it makes -- I can see the clarity in
24 terms of how that is directly and demonstrably related to the
25 ability to operate a marijuana establishment. It's no

1 different than operating any other business. You have to have
2 enough money to see to it that you're going to make it a year,
3 unless it's a restaurant, in which case you have to have three
4 times as much, okay.

5 THE COURT: How many restaurants have you had,
6 Dominic?

7 MR. GENTILE: Four.

8 THE COURT: Okay.

9 BY MR. GENTILE:

10 Q Oh. Here's a question I have for you. You also
11 include financial statements in that component, and, you know,
12 one of the things -- and by the way, I am not opponent of
13 diversity on a personal level, okay. But it's only
14 observations in life, nothing more, I have no science behind
15 it, that tells me that the people who most will benefit from
16 diversity are the people that most get screwed on the wealth
17 side of this. So can you explain to me, sir, how having more
18 money than the next guy matters at all with regard to the
19 ability to operate -- a direct and demonstrable ability to
20 operate a recreational marijuana establishment?

21 MR. SHEVORSKI: Object as to form, Your Honor.
22 Compound.

23 THE COURT: Sustained. Can you break it down, Mr.
24 Gentile, please.

25 MR. GENTILE: Sure. Sure.

1 MS. SHELL: Your Honor, I object. Mr. Graf is
2 sitting in the audience. Can you see his objection? I think
3 they're all vague.

4 THE COURT: I'm sorry, Ms. Shell, but Mr. Gentile
5 had a bad question. He's going to break it down now.

6 BY MR. GENTILE:

7 Q Here's what I'm trying to get it, okay. Assuming --
8 assuming -- assuming that by itself, not necessarily related
9 to this case, but that by itself diversity is a good thing,
10 it's a good thing -- and I keep pointing over here; I
11 apologize for that. I could do this, too, you know.

12 THE COURT: Don't point at Mr. Parker.

13 MR. PARKER: I have no idea why.

14 MR. GENTILE: I mean, I'm an Italian. I'm not
15 exactly in the majority in this country, okay.

16 BY MR. GENTILE:

17 Q But assuming that it's a wonderful government
18 policy, making that assumption, it is defeated, is it not,
19 when you make wealth also a criteria, wealth above and beyond
20 what it takes to buy and operate a year?

21 A I don't -- the wealth part of the application or the
22 financial part of the application, if I understand your --

23 Q They're two different things.

24 A Can you help me understand your question, please.

25 Q Let me -- let me break it --

1 THE COURT: Wait. I've got to have him finish his
2 answer.

3 Sir, could you please finish your answer.

4 THE WITNESS: Sure. Yes. The wealth part of the
5 application or the financial piece of the application there
6 are categories for the amount of money which would tie to
7 their ability to maintain a medical or recreational
8 establishment to the level that is desired in the state of
9 Nevada.

10 Q So the State of Nevada by its Department of Taxation
11 application places a premium on people with the most money or
12 more money than the next guy being better suited, more
13 directly and demonstrably able to operate a medical -- excuse
14 me, a recreational marijuana establishment?

15 A I don't know if the amount of financials would
16 necessarily be more demonstrable than less financials and at
17 what point.

18 Q Well, sir -- are you finished?

19 A Yes.

20 Q Okay. You would agree, would you not, that within
21 that category you have three subcategories, financial
22 statements, first year operating expenses, and liquid assets.
23 We've already agreed that first year operating expenses and
24 liquid assets make perfect sense in any business, all right.
25 So certainly in the recreational marijuana business, as well,

1 okay. But you assigned 10 possible points to financial
2 statements, and this -- it's not the application itself,
3 because the application never told anybody what those subparts
4 were. But the way that you evaluated it -- and when I say you
5 I'm now talking about the Department. I'm not talking about
6 you, Mr. Gilbert, okay. Let's make that clear, okay.

7 A Yes.

8 Q But the way it was evaluated it gave more points --
9 it was a scale of points system that gave more points for how
10 much more money you had on your financial statement. You'd
11 agree to that; right?

12 A Yes, that's correct. There was the sections.

13 Q Okay. Can you tell me, sir, how one guy having
14 \$4 million and another guy having \$10 million makes either one
15 of them more directly and demonstrably capable of operating a
16 recreational marijuana system -- score when everybody has to
17 have the 250,000 and a year's operating expenses?

18 A I'd have to look at -- I'd have to look at their
19 plan, the rest of their application.

20 Q Okay. But I'm talking about this discrete subpart.
21 This discrete subpart, which already has in it \$250,000
22 minimum liquid and enough to demonstrate you could operate for
23 a year, which of itself makes you have to look at the build-
24 out plan -- it has to. You would have no way of knowing what
25 it takes to operate for a year unless you know what your rent

1 is going to be, unless you know how many people are going to
2 be employed --

3 THE COURT: And you could do it under 15 minutes.

4 BY MR. GENTILE:

5 Q And you could do it in under 15 minutes, yes, you
6 can. Yes, you can.

7 I thought you said that your undergraduate work was
8 in business. I assume you took some accounting classes.

9 A I did, yes.

10 Q You know how to read a financial statement?

11 A Yes.

12 Q I want to call your --

13 THE COURT: So did you have a question you were
14 hoping he would answer, or were you pontificating?

15 MR. GENTILE: No. He said -- thought he said yes.

16 BY MR. GENTILE:

17 Q Did you answer that question? You do know how to
18 read a financial statement?

19 THE COURT: No. But before that you had a long
20 thing, and then you [inaudible] can you read a financial
21 statement. Which he answered.

22 MR. GENTILE: He said he did. Well, I'm missing
23 something.

24 THE COURT: Never mind. It's okay.

25 UNIDENTIFIED SPEAKER: Objection, Your Honor.

1 Compound.

2 MR. GENTILE: Well, we have seven more minutes, so I
3 have to find something to do for seven minutes.

4 THE COURT: Shortly. A short question. Not
5 compound.

6 MR. GENTILE: No, not compound.

7 BY MR. GENTILE:

8 Q You know what, let's compare the medical marijuana
9 application in 2014 with the recreational. Let's start with
10 that a little bit. In medical you looked at organizational
11 structure; right?

12 A Yes.

13 Q All right. And you gave 50 points for it. But it
14 was 50 points. You didn't break it down. Remember that?

15 A Vaguely, yes.

16 Q This time you gave 60 points, but you broke it down
17 to organizational chart 15, previously business experience 10,
18 education 5, marijuana experience 10, and diversity. We
19 already went through at least the diversity part.

20 What is it about a person's education in general,
21 what is it about a more highly educated person that would be
22 directly and demonstrably related to operating a medical -- a
23 recreational marijuana facility?

24 A Can you repeat the question. I think --

25 Q What is it about a person with higher education that

1 would make him directly and demonstrably better suited to
2 operate a marijuana facility?

3 A For -- well, it depends on the facility. You know,
4 a production facility, if you're -- if you're educated in, you
5 know, a chef, that would be demonstrable. If you're --

6 Q I do not disagree with that. Let's talk about a
7 retail store, retail marijuana.

8 A Okay.

9 Q Let's say that I have a Ph.D in dance. Does that
10 make me any better suited to run a recreational retail
11 marijuana store or own it, forgetting about running it, than
12 somebody that got a GED?

13 A We'd have to -- what we would do -- or the
14 evaluators would do in that situation is look at your
15 experience. There's the narrative of your experience, your
16 business experience, your marijuana experience and look at
17 that and --

18 Q Right. But that's the overall. I'm talking about
19 actually assigning points for education as being a discrete
20 category.

21 Let's talk about financials. You did the same
22 approach both times, financials. But the first time you were
23 not constrained by the language in the statute that says that
24 there has to be a direct and demonstrable relationship between
25 your financials and your ability to operate a retail marijuana

1 facility. That wasn't there the first time. It's there this
2 time; right?

3 A Yes.

4 Q Okay. And it's because the people of the state of
5 Nevada through an initiative said that that's what it's got to
6 be; right?

7 A Yes.

8 THE COURT: All right. This a good point to take
9 our break and for me to ask the questions for the lawyers.

10 This is not requested break.

11 So, sir, you can get up. We'll see you at 9:00
12 o'clock in the morning. Have a nice evening.

13 Somebody wanted to talk to me about Ms. Dougan,
14 somebody wanted to talk to me about a privilege log and QC
15 notes, and somebody wants to answer questions about scheduling
16 given the fact that Mr. Kemp and Mr. Gentile think they can
17 finish sooner than they thought they could.

18 MR. KEMP: Judge, I have Mr. Balducci's phone number
19 here. He's the one that appeared this morning on behalf of
20 Ms. Dougan.

21 THE COURT: Can you dial it for me, Mr. Kemp.

22 (Pause in the proceedings)

23 THE COURT: Mr. Kemp, come up to the phone, please,
24 so Mr. Balducci can hear you.

25 Anybody else who cares about Ms. Dougan come up here

1 so we can have a discussion.

2 All right. What's the issue?

3 MR. KEMP: Your Honor, just to give you a brief
4 history, we identified Ms. Dougan on the original witness list
5 filed -- we identified her on the original witness list filed
6 on --

7 THE COURT: Can those of you by the podium get away
8 from it. Because you're getting picked up on my mike. Thank
9 you.

10 MR. KEMP: She was identified on the original list
11 filed on 5/23 at 3:00 p.m. Tuesday afternoon Ms. Shell,
12 counsel for GreenMart, asked me if we'd served a subpoena on
13 her. I told her we had and that we would be happy to work
14 with her on the scheduling, but that she was being subpoenaed
15 for Thursday, 5/30, at 9:00 a.m. That was Tuesday. I didn't
16 hear anything until today. She shows up -- an attorney shows
17 up on her behalf and says she can't appear because she's a
18 single mom. Okay. Fine. I said, fine. I said we would work
19 with her on getting her an appropriate time, give her
20 priority, try to get her on and off on Friday.

21 We sent an email to him, and now he says she cannot
22 appear because she is filming some sort of TV show tomorrow at
23 12:30 and that he doesn't have time to prep her and so she
24 can't go on tomorrow. And I just think that's totally
25 inappropriate, Your Honor. They've known a week that she's a

1 witness, it won't take long, it'll take about 20 to 25
2 minutes, and I would like to get her on tomorrow for a lot of
3 reasons.

4 THE COURT: Mr. Balducci, can we go do it at 8:30
5 tomorrow so she can make it to her TV show and get all the
6 lawyers out of here and start this other witness at 9:00
7 o'clock?

8 MR. BALDUCCI: Unfortunately, I just don't see a way
9 for it to happen. I just literally jumped off the call with
10 her. She needs to explain what her schedule is tomorrow.
11 She's -- it's not a TV show. She's doing a feature on
12 Channel 3 for her local restaurant here. That's at 12:30 at
13 the Channel 3 studio. She gets there at 11:00 a.m. for hair
14 and makeup. Previous to that she has to get her restaurant by
15 10:00 a.m. to handle preparation of the food that they're
16 showing on the feature. She lives up here in Summerlin, so
17 she's going to leave her house around 9:15, 9:30 to get there.
18 I was going to meet her in the afternoon tomorrow. I
19 literally just concluded a deposition about 20 minutes ago.

20 THE COURT: So when I've gone to Channel 3 they
21 never did hair and makeup for me.

22 MR. BALDUCCI: We'd offer 9:00 a.m. on Monday.

23 THE COURT: Okay.

24 MR. BALDUCCI: Then after that she's available --

25 THE COURT: Well, but the problem is I told you that

1 I have scheduling issues that you saw we talked about having
2 her come tomorrow. What time is she going to be done at
3 Channel 3 tomorrow?

4 MR. BALDUCCI: She'll be done at 2:30.

5 MR. KEMP: We can do it at 3:00, Your Honor.

6 THE COURT: So why don't we have her come at
7 3:00 o'clock.

8 Ms. Shell.

9 MS. SHELL: Your Honor, I just want to correct the
10 record regarding some of Mr. Kemp's representations. Mr. Kemp
11 actually -- and I did not speak about Ms. Dougan being a
12 witness until yesterday afternoon, because yesterday before we
13 wrapped for the day was when he announced she was going to --

14 THE COURT: Yesterday was Wednesday.

15 MS. SHELL: Yes. Yeah. Yesterday was Wednesday.

16 THE COURT: Monday was a holiday, which may be why
17 he's off a day.

18 MS. SHELL: Correct. So it was yesterday. And we
19 did know that she'd been subpoenaed until I asked him in the
20 hall when we had already wrapped from court. So I just wanted
21 to clarify.

22 THE COURT: We've got it all worked out. She'll be
23 here tomorrow afternoon.

24 Thank you, Mr. Balducci for working on it.

25 MR. BALDUCCI: Thank you, Your Honor.

1 MS. SHELL: [Inaudible] every day, Your Honor.

2 THE COURT: Yeah.

3 MR. BALDUCCI: One final -- I still haven't even met
4 with her. I've literally [unintelligible] at a hockey game
5 last night and then formalized this morning. I haven't met
6 her person. She's operating a restaurant. I could call her
7 and see if I can pull her away from her duties there.

8 THE COURT: [Unintelligible] come over and talk to
9 you. All right. 'Bye. See you, Mr. Balducci.

10 Okay. Next issue. Privilege log QC notes.

11 (Pause in the proceedings)

12 THE COURT: Okay. QC notes, privilege log.

13 MS. HAAR: The quality control notes that were
14 referenced were actually the evaluators' handwritten score
15 cards that they then met up on their weekly meetings. We
16 identified those in our MM original 16.1 disclosures on a
17 privilege log. I thought that to Mr. Parker discussed a
18 possible option would be doing similar to what we did with the
19 applications. Every applicant gets their own score cards to
20 redact as necessary and then redisseminate.

21 THE COURT: Why would I want to let the score cards
22 be redacted? Aren't the score cards something that the
23 graders did?

24 MS. HAAR: Yes. But there were handwritten notes
25 involving people's names, financial information, and that sort

1 of thing. So just in abundance of caution we identified them
2 as privileged, but --

3 THE COURT: So why don't we just mark them as
4 attorney eyes only.

5 MS. HAAR: That's another option.

6 THE COURT: Anybody have a problem with that? It's
7 certainly quicker than having all of you try and redact them.
8 And cheaper for your clients.

9 MR. PARKER: Sounds great to me, Your Honor.

10 THE COURT: Anybody have an objection?

11 (Pause in the proceedings)

12 MR. KOCH: I don't think we've seen them.

13 THE COURT: None of us has seen them.

14 MR. KOCH: Yeah.

15 THE COURT: They're on a privilege log.

16 MR. KOCH: To the extent that they [inaudible] gives
17 us all a chance to look at them before they be submitted as an
18 exhibit, certainly. We'd mark them as attorneys' eyes only.

19 THE COURT: Absolutely. All I'm suggesting is that
20 for purposes of you all being able to look at them, rather
21 than having them redacted by the defendants in intervention
22 first, that they be marked as attorney eyes only so you can
23 all look at them. And before they're used this proceeding,
24 appropriate redactions would have to be made if they're going
25 to be admitted at all. Because they may not be appropriate to

1 admit. What do you think? Does that solve your problem?

2 MR. PARKER: Solves mine.

3 MR. BHIRUD: I have a question. Is that going to be
4 for the parties here, or for all applicants?

5 THE COURT: I am not going to admit anything for
6 anyone who is not participating in this case. How's that?
7 I'm not saying I'm not going to treat them as attorney eyes
8 only, but for purposes of them becoming a public record unless
9 somebody's participating I'm probably not doing that.
10 Somebody will have to show me something really, really,
11 really good for me to then say, okay, the three words that are
12 on that thing, like you should start a dispensary in Yerington
13 for Burning Man.

14 MR. BHIRUD: LOL.

15 THE COURT: My kids were surprised I actually knew
16 what LOL was last night when I told them I learned about LOL
17 on the stand.

18 (Pause in the proceedings)

19 THE COURT: Anything else?

20 MR. BHIRUD: So before we move on, so we're to
21 produce all of them attorneys' eyes only for all applicants.

22 THE COURT: Yes, please. And none will be used in
23 this proceeding unless everybody stipulates and they are
24 redacted and the person is here in the courtroom or you have
25 obtained a waiver or permission. Unless it's something that's

1 highly inflammatory that shows that proc was totally screwed
2 up. But, I just talked to and told them blah, blah, blah,
3 blah, that would be bad and we'll [unintelligible] if you find
4 it.

5 Next issue is scheduling. I understand that you're
6 not going to take as long as you need.

7 (Transcribers' note: We certainly hope not!)

8 THE COURT: How many more days do you need?

9 MR. KEMP: Your Honor, I'm still going to say two,
10 but I'm going try to cut back.

11 THE COURT: So we're going to go three.

12 MR. KEMP: Judge, I think --

13 THE COURT: That's your case; right?

14 MR. KEMP: Yeah.

15 THE COURT: How many days do you all need?

16 MR. SHEVORSKI: I'm anticipating maybe one witness
17 in our case in chief, Your Honor.

18 THE COURT: Half day?

19 MR. KOCH: I would say we'd schedule one day.

20 THE COURT: So that's four and a half days. Your
21 trial [unintelligible]?

22 MR. KOCH: 11th and 12th. So we'd offered
23 potentially to have June 10th as the next day we'd return,
24 and --

25 THE COURT: After you do your other preliminary

1 injunction hearing.

2 MR. KOCH: Correct.

3 THE COURT: Which will last 10 minutes or so.

4 MR. KOCH: And then I think we said the 17th, that
5 week is open, but I don't know what the conflict or --

6 THE COURT: It is. But you were going to be driving
7 to scout camp.

8 MR. KOCH: I've arranged to take care of that.

9 THE COURT: Someone else is driving.

10 MR. KOCH: I can go up there late, if I need to.

11 THE COURT: okay.

12 MR. KOCH: But as long as we're not here the whole
13 week.

14 MR. PARKER: And, Your Honor, you do recall that
15 myself and Adam cannot be on the 17th. We can do the 18th --
16 I can do the 18th, 19th, 20th, 21st.

17 THE COURT: Do I need you here on the 17th, or can
18 your associate be here? She's been involved in some of the
19 things.

20 MR. PARKER: I need to be here.

21 THE COURT: Okay.

22 MR. KOCH: So the 19th would be the latest I could
23 be here if we continued. So 18th and 19th would be the only
24 two days, it sounds like.

25 THE COURT: If I do the 10th starting at 10:30, the

1 17th starting at 9:30, the 18th starting at 9:00 o'clock, can
2 you get done?

3 MR. GENTILE: The 11th is no longer in play?

4 THE COURT: He has a trial in front of Judge
5 [unintelligible].

6 MR. KEMP: I have a trial that day. I'll let you
7 know if it changes, but I don't it's going to.

8 THE COURT: It's okay for me, but I'm trying to get
9 all of you in the same place at the same time.

10 (Off-record colloquy)

11 THE COURT: 10, 18, 19.

12 MR. KOCH: Your Honor, with respect to tomorrow,
13 I've spoken to Mr. Kemp, our client representative Mr. Jolley
14 I told him was available tomorrow. He does not intend to call
15 him tomorrow. After that he's not available, so just for the
16 record, we've had that discussion, he does not intend to call
17 him tomorrow. I do not think he'll be available after
18 tomorrow.

19 MR. KEMP: Well, he's not available permanently
20 tomorrow. I thought he was going on vacation.

21 MR. KOCH: He's gone for an extended period. It
22 will be long past the 19th. So --

23 MR. KEMP: So he's gone past the 19th.

24 THE COURT: You don't want to call him tomorrow,
25 then?

1 MR. KEMP: No, Your Honor. There are other people
2 at his company I could call.

3 THE COURT: Okay. All right.

4 MR. KEMP: I may have to substitute someone on the
5 witness list for him.

6 MR. KOCH: We can discuss that.

7 THE COURT: Those things happen.

8 So tomorrow morning at 9:00 o'clock we'll resume
9 with this witness. We will go with whatever witnesses you
10 have. We will take Ms. Dougan at around 3:00 o'clock, and
11 then we will break until the 10th at about 10:30 when I finish
12 with the other preliminary injunction hearing which is really,
13 really short, and then we'll start.

14 MR. KOCH: Your Honor, just one more thing. I'm
15 sorry.

16 THE COURT: It's okay.

17 MR. KOCH: In light of the schedule we discussed I
18 think Mr. Kemp and I discussed earlier about maybe moving
19 around the findings of fact and conclusions of law.

20 THE COURT: You want me to move them again? How
21 about till the 10th?

22 MR. KOCH: Well, if were going to have three more
23 days of testimony -- or two more days of testimony --

24 THE COURT: Well, I usually make people give them to
25 me before the hearing starts.

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MR. KOCH: I remember that now, Your Honor.

THE COURT: Yes.

MR. KEMP: To the end of the day on the 10th?

MR. KOCH: End of the day on the 10th work.

THE COURT: End of the day on the 10th. Word
format, please.

Anything else? See you at 9:00 o'clock.

(Court recessed at 4:54 p.m., until the following day,
Friday, May 31, 2019, at 9:00 a.m.)

* * * * *

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Valerie Fridland	51	81/94		
Mike Viellion	100/155	128/137/		
		144/172	164/173	175
Steve Gilbert	180	-	-	-

* * *

EXHIBITS

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

None admitted

* * *

DEFENDANTS' EXHIBIT NO.

2019	172
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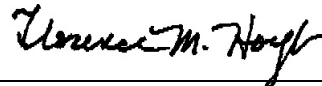
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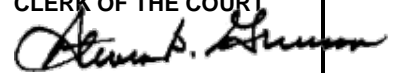
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Las Vegas, Nevada 89146**



FLORENCE M. HOYT, TRANSCRIBER

6/14/19

DATE



TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

SERENITY WELLNESS CENTER LLC,)
et al.,)

Plaintiffs,)

vs.)

STATE OF NEVADA DEPARTMENT OF)
TAXATION,)

Defendant.)

CASE NO. A-19-786962-B
DEPT NO. XI

**TRANSCRIPT OF
PROCEEDINGS**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

FRIDAY, MAY 31, 2019

EVIDENTIARY HEARING - DAY 5

VOLUME I of II

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

JD Reporting, Inc.

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21 JOSEPH A. GUTIERREZ, ESQ.

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1 **LAS VEGAS, CLARK COUNTY, NEVADA, MAY 31, 2019, 9:06 A.M.**

2 * * * * *

3 THE COURT: Morning. You may be seated.

4 UNIDENTIFIED SPEAKER: Good morning, Your Honor.

5 UNIDENTIFIED SPEAKER: Good morning, Your Honor.

6 THE COURT: All right. Mr. Shevorski, you're
7 standing up.

8 MR. SHEVORSKI: Just real quick, Your Honor. We've
9 reached an agreement with all the plaintiffs' counsel to admit
10 a new exhibit; it's a stipulated exhibit. We propose that it
11 be marked 5A in line with Your Honor's previous suggestion.

12 THE COURT: Is this the correct version of the
13 application, the blank one?

14 MR. SHEVORSKI: Yes. It's Exhibit B to plaintiffs'
15 motion for preliminary injunction so --

16 THE COURT: Is everybody okay with the admission of
17 5A?

18 MR. KEMP: Your Honor, I would object to the
19 characterization of this as the correct one --

20 UNIDENTIFIED SPEAKER: Yeah.

21 MR. KEMP: -- given that the one that we admitted as
22 Exhibit 5 was on their website until yesterday at 4:00 when
23 they pulled it down. So I would --

24 THE COURT: So is -- what is 5A then so I can be sure
25 I understand it before we get too far?

JD Reporting, Inc.

1 MR. KEMP: 5A is a new version of 5 the application
2 and --

3 THE COURT: (Unintelligible) when was 5A --

4 MR. KEMP: Apparently it was generated --

5 UNIDENTIFIED SPEAKER: No.

6 THE COURT: Wait. You're not involved.

7 MR. SHEVORSKI: I'm happy to answer that question,
8 Your Honor.

9 THE COURT: That's why Mr. Shevorski is standing up.
10 Tell me.

11 MR. SHEVORSKI: It was sent out July 31st, 2018 --

12 THE COURT: Shhh --

13 MR. SHEVORSKI: Sorry.

14 THE COURT: Sorry, Mr. Parker and Mr. Hymanson, I may
15 have to take control of you guys. Separate you. Sit on
16 opposite ends of the room. No more talking or passing notes.

17 MR. SHEVORSKI: Sorry. It was simply circulated
18 through the list served on July 31st, 2018, by Kyril Plaskon,
19 and it is Attachment B to Serenity plaintiffs' motion for
20 preliminary injunction which all plaintiffs have joined.

21 THE COURT: Okay. So there is an issue as to which
22 is the correct application, but it is at least an application
23 that was circulated to those on the list, sir.

24 MR. SHEVORSKI: I would also if you want I can make
25 an offer of proof is the application that was used by MM and

1 Live Free.

2 THE COURT: I noticed that yesterday.

3 MR. KEMP: Yeah, Judge I was just going to point out
4 this -- two different applications were used by different
5 people. It's accepted by the State.

6 THE COURT: Different forms. Clearly different forms
7 were used by different people, and I was confused when I
8 started having you guys read from different forms that weren't
9 what looked like what I was using.

10 UNIDENTIFIED SPEAKER: Yeah.

11 THE COURT: So everyone's stipulating to Exhibit 5A,
12 and you're going to argue the difference between Exhibit 5 and
13 Exhibit 5A and the importance of that sometime later; right?

14 MR. SHEVORSKI: Per party, Yes, Your Honor.

15 THE COURT: Is that the deal? Anybody object?

16 MR. KEMP: Your Honor, I object to him trying to say
17 what was done and not done with regards to Live Free unless he
18 wants to attach the true Live Free application which I have
19 that here.

20 THE COURT: Okay. Mr. Shevorski, look over
21 Mr. Kemp's shoulder and if you want we'll just admit it
22 understanding there were two different versions circulating out
23 there, and we'll talk about the import of that at some later
24 date.

25 MR. SHEVORSKI: And after review of it he appears to

1 be correct about Live Free. I know that if you look in our MM,
2 it's the other one.

3 THE COURT: I know. I saw one that used a
4 different --

5 MR. KEMP: That's the whole problem, Your Honor.

6 THE COURT: I understand your position, Mr. Kemp, and
7 this is further evidence of it.

8 Guys, don't argue. I've admitted Exhibit 5A and
9 you're going to argue about the import of the existence of both
10 5 and 5A.

11 (Defense Exhibit No. 5A admitted.)

12 MR. SHEVORSKI: Very good, Your Honor.

13 THE COURT: Is that okay?

14 MR. KEMP: The Live Free one would be --

15 THE COURT: It's okay, I don't need it right now,
16 Mr. Kemp.

17 UNIDENTIFIED SPEAKER: Well, he stipulated to it so.

18 THE COURT: I know.

19 MR. KEMP: Yeah, it's --

20 UNIDENTIFIED SPEAKER: I put it in.

21 THE COURT: Isn't it in?

22 UNIDENTIFIED SPEAKER: Put it in.

23 MR. KEMP: Yeah, let's put it in, Your Honor.

24 THE COURT: What's its number?

25 MR. KEMP: 21. Your Honor.

1 UNIDENTIFIED SPEAKER: It's already in.

2 UNIDENTIFIED SPEAKER: It's already in.

3 THE COURT: Okay. It's already admitted. So we
4 don't need to worry about it anymore.

5 Anything else before we resume with our witness who
6 was very patient with us yesterday and now understands why it
7 takes so long for us to get to people.

8 MR. CRISTALLI: Your Honor --

9 THE COURT: Yes, Mr. Cristalli.

10 MR. CRISTALLI: -- the State has -- the State and the
11 interveners I think have agreed to accommodate our expert this
12 morning and put Dr. Amei on first thing if the Court allows us
13 to do that?

14 THE COURT: Is that correct? Is everybody agreeable
15 to that?

16 MR. SHEVORSKI: The State would make an objection,
17 but the State thinks he knows how Your Honor would rule so --

18 THE COURT: Yes, I -- you do. Thank you.

19 So let's take the witness out of order, quickly
20 finish it. That means no grandstanding, no speeches. Let's
21 get to the heart of the matter.

22 MR. GENTILE: All right. Your Honor, we would ask
23 that Mr. Gilbert be excluded.

24 THE COURT: I have not imposed the exclusionary rule
25 on this.

1 MR. GENTILE: But he is mid testimony.

2 THE COURT: I understand, Mr. Gentile.

3 MR. GENTILE: Okay.

4 THE COURT: Okay. So if I could have our next
5 witness.

6 Mr. Gilbert, we're going to interrupt your testimony.
7 You do not have to sit in here. You are welcome to go outside
8 and do work if you want to or just walk around, or you can sit
9 here if you'd like.

10 Our next witness.

11 MR. CRISTALLI: Plaintiffs call Dr. Amei.

12 THE COURT: In the hallway?

13 UNIDENTIFIED SPEAKER: Yes.

14 THE COURT: Okay. Carl is filling in for Ramsey and
15 so.

16 **AMEI AMEI**

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

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

21 THE WITNESS: So my name is Amei Amei. A-m-e-i,
22 A-m-e-i.

23 THE COURT: Good morning.

24 THE WITNESS: Good morning.

25 THE COURT: Given the nature -- oh, you can sit down.

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1 THE WITNESS: Okay.

2 THE COURT: Given the nature of your work I don't
3 think you're going to need the binders around you --

4 THE WITNESS: No.

5 THE COURT: -- counsel may refer you to them.
6 There's also water in the pitcher next to you and M&Ms in the
7 dispensers.

8 THE WITNESS: Oh, good.

9 THE COURT: Counsel, you can proceed.

10 MR. CRISTALLI: Thank you, Your Honor.

11 DIRECT EXAMINATION

12 BY MR. CRISTALLI:

13 Q Good morning, Dr. Amei.

14 A Morning.

15 Q Dr. Amei, can you tell Your Honor and counsel a
16 little bit about your background starting with your education.

17 A Yes. So I'm -- I got my Ph.D. degree from Washington
18 University in St. Louis so with a statistic concentration. And
19 after that I joined the University of Nevada Las Vegas as a
20 tenure track assistant professor in statistics. So 2013 I got
21 my tenure promoted to associate professor. So right now I'm a
22 associate professor at UNLV Department of Mathematical
23 Sciences.

24 Q Okay. And just so you're -- just so we're clear
25 because everything's being recorded and transcribed if you

1 could wait until I asked the question and then you respond and
2 respond clearly and speak slowly.

3 A Okay. I will.

4 Q Okay. Thank you. So in your role as associate
5 professor UNLV in the department of mathematics what courses do
6 you teach?

7 A So it's a faculty at the Department of Mathematical
8 Sciences usually when we need to conduct a research at teaching
9 and the service. So I teach -- since I joined the UNLV I have
10 been teaching a wide range of undergraduate and graduate
11 statistic classes. And I have also advised to Ph.D. student
12 and currently have five Ph.D. students.

13 Q In the course of your role as professor in the
14 Department of Mathematics at UNLV, do you conduct with your
15 students or on your own any statistical research?

16 A Yes, I do. In fact, the main duty for us is to
17 conduct research. So my research has been focused on
18 developing probability and statistical models so that you solve
19 the problems in the area of biology, genetics, cancer research,
20 and signal processing and engineering. And since I joined the
21 UNLV I have been -- I have published the 17 papers. Most of
22 them are in the high impacted journals. And I also have been
23 invited to give a talk at the international statistic
24 conference.

25 Q Okay. Let's just step back for one moment. In terms

1 of your publications could you just tell us, not all of them,
2 but just give us a sample of some of the publications that you
3 were responsible for.

4 A Yeah. So, for example, my publication started --
5 it's developed from my dissertation topic which is
6 (unintelligible) feeling, and we choose to publish in the
7 Annals of Applied Probability which is a culture in the
8 statistics. And then after that I have been using that to
9 model to analyze basically the evolutionary process and then a
10 couple of applications has been published in Genetics and Royal
11 Statistical -- the Journal of Statistical Science B, and also I
12 have been studying the cancer studying so how can I apply the
13 model in the cancer research and published a couple of journal
14 in that area.

15 Q And as part of your research do you have occasion to
16 lecture?

17 A Yeah. So once you publish paper you will go to
18 statistical conference to give a talk, and I was invited to a
19 couple. And last semester I was invited speaker at the Yale
20 School of Public Health.

21 Q And in your capacity as professor at UNLV and with
22 your background in statistics and mathematics have you been
23 awarded any honors?

24 A I received a couple of research grant and award, yes.

25 Q And finally are you in -- are you part of any

1 professional associations or affiliated with any groups?

2 A Yeah. So as a -- the service is also like some part
3 of our job so we have to serve in the professional and also
4 community. So since 2010 I'm a designated statistician for
5 University Transportation Center. So which is run by UNLV and
6 the State Department of Transportation. So we mainly develop
7 model and analyze the data from generated from transportation.

8 Q Thank you. Can you tell us what statistical
9 hypothesis testing is.

10 A So, in fact, yeah, when I look at the data
11 statistical hypothesis testing is a statistical methodology to
12 test a specific hypothesis or you can understand as a test for
13 a specific statement based on data to really test -- to come of
14 the decision whether or not your hypothesis is valid or not
15 based on probability. The so called the P lab.

16 Q And did you conduct a statistical hypothesis testing
17 in doing your analysis for your testimony here today --

18 A Yes.

19 Q -- without getting into the specifics?

20 A Yes, I did apply the statistical hypothesis testing.

21 Q Okay.

22 MR. CRISTALLI: Can you pull up 220.

23 Your Honor, may I just move the board?

24 THE CLERK: No, that's proposed.

25 THE COURT: Yes.

1 MR. CRISTALLI: I thought we have had that -- I
2 thought we had that in.

3 MR. KOCH: We've got as a defendant -- is this the
4 whole tally sheet --

5 MR. CRISTALLI: Yes.

6 MR. KOCH: Yeah, we've got it at 5,000.

7 MR. CRISTALLI: It is 5,000, but I thought -- last
8 night I received a e-mail that you were in receipt of it.

9 THE CLERK: Yes, but --

10 THE COURT: Being in receipt of it doesn't mean it's
11 been admitted.

12 MR. CRISTALLI: Sorry. To make it easier only
13 because I don't want to switch screens --

14 THE COURT: Any objections to its admission given the
15 fact the same document is in the 5,000 series?

16 MR. KOCH: Is it the whole set or is it just the one?

17 MR. CRISTALLI: No. It's just the one sheet.

18 MR. KOCH: Okay. What's the argument with --

19 MR. CRISTALLI: It is --

20 THE COURT: So based on the fact there's no objection
21 it will be admitted.

22 (Plaintiff Exhibit No. 220 admitted.)

23 MR. CRISTALLI: Thank you. May I now move the board?

24 THE COURT: You may.

25 MR. CRISTALLI: Thank you.

1 BY MR. CRISTALLI:

2 Q In conducting -- before we get to the exhibit -- in
3 conducting your analysis did you use a particular applicant
4 that was involved in the 2018 licensing process for the retail
5 marijuana?

6 A Yes.

7 Q Okay. And was that applicant GBS of Nevada?

8 A Exactly.

9 Q And yesterday we identified that GBS of Nevada was
10 given an RD number of 402 through 406?

11 MR. CRISTALLI: Can you go to 402.

12 BY MR. CRISTALLI:

13 Q Doctor, do you have the tally sheet in front of you
14 which is identified as RD 402 through 406?

15 A Uh-huh. Yes.

16 Q Is this the tally sheet that you used in conducting
17 your statistical hypothesis testing analysis?

18 A Yes. This is the nonidentified, right. Yes.

19 Q Okay. Do you explain -- explain that -- you
20 conducted your analysis specifically on the nonidentified
21 portion of the application?

22 A Yes. Okay. So the totals for application can get
23 250 points out of which 125 points are supposed to be identical
24 across all the applications by one applicant. So I wasn't
25 focused on that which meant 125 out of the 250 points can vary

1 from application to application. So that's what my analysis
2 stand for. So here to conduct this statistical hypothesis
3 testing so I have Q hypothesis. So I call it the null
4 hypothesis saying the scoring system is blind and randomized,
5 and the evaluations off the applications are independent across
6 all the reviewers. So that is my null hypothesis. So the
7 alternative hypothesis would be this is not true. Okay. So in
8 order to come up -- to conduct the --

9 Q And before you get into your analysis --

10 A Uh-huh.

11 Q -- in conducting your statistical analysis, were you
12 provided information that the five applications that are on
13 tally sheet RD 402 through 406 contained different information
14 as related to each application that was submitted to the State?

15 A That is correct. I received that information the
16 five applications filed by single company GBS in terms of
17 content at least 5 percent are different. So therefore
18 5 percent of the 125 would be 6.25. So under the assumption if
19 the scoring --

20 Q And let me stop you there. Would it assist you to
21 use the board in explaining your analysis?

22 A I think I will try to without using the board.

23 Q Okay.

24 A And if I'm clear enough. If I need it, may I use it?

25 Q Absolutely.

1 THE COURT: You may.

2 THE WITNESS: Okay. Thank you.

3 THE COURT: And if you want to stand up to get
4 there --

5 THE WITNESS: Oh, yeah, so --

6 THE COURT: -- that's great, but you need to remember
7 to keep your voice up --

8 THE WITNESS: Okay.

9 THE COURT: -- and slow down.

10 THE WITNESS: Slow down. Okay.

11 MR. CRISTALLI: And, Your Honor, I did bring some dry
12 erase markers, can I approach?

13 THE COURT: You may.

14 MR. CRISTALLI: Thank you.

15 THE COURT: We could have probably found some, but we
16 appreciate your diligence in bringing your own markers.

17 THE WITNESS: Thank you.

18 So basically the-- so I'll try to speak slowly. So
19 the procedure is I have to form two hypothesis that mainly the
20 null hypothesis is saying that scoring system is not blind and
21 randomized also. The evaluations across the reviewers are not
22 independent. So by the way in the statistic world we all know
23 the only way of get rid of bias is by randomization. So this
24 is why I assuming the underlying scoring system had to be
25 randomized and blind and also independent of cross

1 [unintelligible] readers.

2 So -- so then look at this specifically example so
3 under this assumption that null hypothesis then the difference
4 between the two applications filed by the same applicant should
5 be uniformly distributed -- so it should be uniformly
6 distributed from 0 to 6.25. So where did I get the 6.25
7 because I know that in terms of the content, the 5 percent of
8 the content across the five applications from the GBS they are
9 different. So therefore 5 percent of the 125 is 6.25. So in
10 statistic work difference has to be uniformly distributed from
11 0 to 6.25. Okay.

12 So the five applications from GBS they are identical
13 especially the scores they are identical up to two decimal
14 places. So two -- five applications can generate two
15 independent differences because I need to pick the differences
16 between two applications. I had five so I can generate two
17 independent differences in the scores.

18 And then once I generate the two different -- the two
19 differences in scores, but their scores are 98.17. So they are
20 five identical numbers. If I pick the difference, I ended up
21 with 000, right, but because it's two decimal places so
22 therefore the possible differences they can have is less than
23 or equal to 0.009 because it's two decimal places.

24 Okay. So therefore I am trying to calculate the
25 probability of resulting a difference that in two application

1 scored which is less than or equal to 0.009. And in statistic
2 this is 0.009 or 6.25 that's the probability of obtaining two
3 applications which exactly result in this score. And it turns
4 out this probability is 0.00014. So I have two -- I have five
5 applications which means I can generate two independent
6 differences. This is a probability of one difference is like
7 less than 0.09.

8 So if I had two I just swear this quantity and the
9 final the so-called P variable is equal to approximately 2 --
10 2.07 times the 10 to the negative 6 power. So this is
11 basically 2 in a million. And in hypothesis testing the P --
12 the small P value is the strong evidence against your null
13 hypothesis. And when you say small you meet this threshold.
14 So in the conventional industrial area of the convention is
15 5 percent or sometimes it's [unintelligible] it's 1 percent.
16 But however we ended up a P value which is 2 in a million.

17 So this is the strong evidence against the H mod, the
18 null hypothesis. So I can reject the null hypothesis and
19 conclude that the underlying scoring process is neither blind
20 or randomized or the evaluations across the reviewers are not
21 conducted by independently.

22 BY MR. CRISTALLI:

23 Q Thank you. And so --

24 THE COURT: That's easier than the extrapolation I
25 had to do with City Center, so it's okay.

1 MR. CRISTALLI: Well, that's good. I'm happy about
2 that.

3 THE COURT: So that's easier.

4 BY MR. CRISTALLI:

5 Q So, Doctor, then having concluded the P you would
6 then based on your analysis lead to a rejection of your --

7 A No. Not hypothesis which means the scoring process
8 is blind and randomized. So the scoring process blind means
9 you don't know whose application is reviewing. Randomized
10 means all of the 400 or 500 applications come in a shuffled
11 random order, and then evaluation has to be done independently
12 across three reviewers means they conduct analysis
13 independently no any communications.

14 Q So -- so a proper blind random review process would
15 be that the applicants -- the applications would be shuffled,
16 and each examiner would be reviewing each application
17 independently?

18 A Exactly.

19 Q Okay. And when you say two in a million is in the
20 world of statistics, would that be an impossibility?

21 A Yeah. It is not just in world of statistic, but, in
22 fact, that this is the correct may called impossible because in
23 a world of statistic we use 5 percent or 1 percent threshold,
24 but this two in a million it is just -- it's statistically
25 significantly that null hypothesis not true and it is over

1 correctly I can conclude in practice it's also can reject the
2 null hypothesis.

3 MR. CRISTALLI: Thank you, Doctor.

4 No further questions, Your Honor.

5 THE COURT: Any of the plaintiffs who are
6 participating want to examine?

7 Mr. Parker.

8 MR. PARKER: Yes, I only have I think one.

9 THE COURT: We're not talking about extrapolation;
10 we're only talking about hypothesis --

11 MR. PARKER: I am.

12 THE COURT: -- and bias and independence and
13 randomization.

14 THE WITNESS: Exactly.

15 DIRECT EXAMINATION

16 BY MR. PARKER:

17 Q I just want to talk about the final result, Dr. Amei.

18 A Uh-huh.

19 Q Because I enjoy math. Although I'm not very good at
20 it I enjoy it.

21 A Thank you.

22 Q The result is because of your P value that you reject
23 your null hypothesis and your in layman's terms how hypothesis,
24 and in layman's terms you determined that this was not a
25 unbiased scoring?

1 A Yeah.

2 Q In fact, it was a biased scoring?

3 A Uh-huh. It's, yeah.

4 Q And that's all I needed to hear.

5 A Exactly.

6 MR. PARKER: Thank you so much.

7 THE COURT: Any other plaintiffs wish to inquire?

8 The State.

9 Mr. Shevorski.

10 MR. SHEVORSKI: Thank you, Your Honor.

11 THE COURT: And, Doctor, if you want you can sit
12 down.

13 THE WITNESS: Thank you.

14 CROSS-EXAMINATION

15 BY MR. SHEVORSKI:

16 Q Is it Dr. Amei?

17 A Yes.

18 Q Good morning.

19 A Good morning.

20 Q My name is Steve Shevorski. I work for the office of
21 the Attorney General.

22 A Oh, okay.

23 Q I want to ask you a little bit about your experience.

24 A Okay.

25 Q Have you ever worked for a construction company?

1 A Construction company, no.

2 Q Have you ever evaluated a construction plan of any
3 kind?

4 A No.

5 Q In -- have you ever evaluated as in your work how a
6 construction plan might be graded to evaluate it for adequacy?

7 A No.

8 Q In your preparation for making your report, did you
9 talk to anyone with regards to the construction plans -- well,
10 strike that. Did you review any construction plans?

11 A I did not myself review construction plans, but I was
12 in the meeting when the other lawyers they were talking about
13 the construction plans.

14 Q Other than lawyers, did you talk to anyone regarding
15 construction plans?

16 A I don't think so.

17 Q Previously you said you used the word difference.

18 A Uh-huh.

19 Q And what was that in reference to?

20 A Oh, I'm just purely looking at the difference between
21 two numbers.

22 Q Okay. So you're not looking at the -- whether there
23 was any actual difference in the construction plans that were
24 being submitted for grading?

25 A Oh, I'm sorry. I think I -- so the second time I

1 talked about the difference is difference in scores. When I
2 talk about the difference in content across the five
3 applications of the GBS so that is really mean the content of
4 the difference the owner explained to me.

5 Q Okay. Okay. So the owner told you that there was a
6 difference in the construction plans, but you don't know
7 whether that's true or false, do you?

8 A I look at their application they are not the same.

9 Q You say they're not the same?

10 A Uh-huh.

11 Q Do you have an ability based upon your professional
12 background to explain to me why they're not the same?

13 A So their specific descriptions are not the same. I
14 don't have an actual measurement.

15 Q So you -- so they're just -- you read the
16 descriptions and thought they were different, but you don't
17 know whether their meanings are different or whether or not
18 they're in terms of -- strike that. That's a compound
19 question. You don't -- looking at --

20 MR. SHEVORSKI: Sorry, Your Honor, I can feel your
21 look.

22 THE COURT: Somebody was going to get to win an
23 objection.

24 MR. SHEVORSKI: Mr. Graf told me he only wants it to
25 be him.

1 MR. CRISTALLI: I guess I missed that one.

2 THE COURT: Yeah.

3 BY MR. SHEVORSKI:

4 Q With respect to the content of the plans that -- did
5 you review them personally or you just talked to the person
6 from GBS?

7 A The person from GBS, and I also looked at roughly the
8 applications.

9 Q Okay. Did you -- based on your professional
10 experience did you have any background to understand them?

11 A Oh, background to understand. I'm not sure what kind
12 of background you're referring to.

13 Q Any background in construction industry --

14 A I do not.

15 Q -- to see if they have, for example, if they have a
16 timeline for the construction product to be completed?

17 A I do not have any background in construction.

18 Q Whether or not it had sufficient hand sinks?

19 A No, I do not have any background. I think I am just
20 trying to understand based on my common knowledge.

21 Q Okay. So if it turns out that the lawyers that you
22 talked to were incorrect about difference in the content --

23 A Or about the owner.

24 Q Or the owner was incorrect about the differences in
25 content, you would have to change your opinion; would you not,

1 because that's the only basis for your finding there was a
2 difference?

3 A Yes. Yes. But even though if we use the
4 conservative saying the difference is 1 percent and if I
5 conduct a whole analysis recalculate the probability, the final
6 probability is 5.2 times 10 to the negative 5. That's still a
7 teeny tiny P [unintelligible].

8 Q Okay. I -- that's still. What if -- I'm just posing
9 this as a hypothetical -- every single plan that that owner
10 submitted had the same flaws in it?

11 A In -- same flaws and then it turns out to be the
12 score for the three independent reviewers are exactly treating
13 the same score, giving the same scores that is quite unusual to
14 happen. This score --

15 Q But you wouldn't know that; right? I'm sorry, I
16 didn't let you finish your answer.

17 A No. You go ahead.

18 Q You wouldn't know that, right, because you don't know
19 what the graders were looking for?

20 A They have the criteria.

21 Q Right, and so they have the criteria --

22 A Uh-huh.

23 Q -- but, for example, if every single application
24 was -- received a lower score because it didn't have sufficient
25 hand sinks or every single application received the same

1 deficient score because it didn't have a construction timeline,
2 that would account for why the scores regardless of the
3 jurisdiction may have received -- may have been similar;
4 correct?

5 A So you're receiving a lower score that is okay, but
6 you're receiving exactly the same lower score that is really
7 because actual score is from 0 to 50 point or 0 to 20 point how
8 come three independent reviewers come up exactly say this
9 applicant get, okay, 7.8 without the -- they're evaluating
10 independently so.

11 Q Okay. Did you talk to the reviewers --

12 A The reviewers?

13 Q -- the evaluators who actually made the scores to
14 find out why they reached their conclusions?

15 A No, I never talked to the evaluators.

16 Q Okay. And so your opinion is -- other than based
17 upon the owner that you sat in a room with when he was talking
18 and the lawyers, your opinion is purely theoretical?

19 A It's based on the data. The data is all of the
20 scores in the small detailed categories across the three
21 reviewers are identical.

22 Q Did you review any of the scores, for example, on --
23 on -- let's use the applicant at GBS that owner you met with,
24 did you review the scores for organizational structure or is it
25 just the construction that you looked at?

1 A Only the tally sheet I looked at.

2 Q Do you know whether the tally sheet you looked at was
3 just for construction or was it for something else?

4 A Yeah. They have a detailed categories there.

5 Q What were the categories that you looked at?

6 A All of the categories.

7 Q So you looked at the categories for organizational
8 structure?

9 A Yeah.

10 Q And would you expect that the score for
11 organizational structure would change based on the jurisdiction
12 it submitted -- it's sent to or applies to, excuse me?

13 A So if that category is under that's called the
14 nonidentified which means you're supposed to vary.

15 Q Okay.

16 A Yes.

17 Q What about financial planning, would you expect that
18 grade to change?

19 A So again is not like what I'm expecting. I again go
20 back to the nonidentified scoresheet to check whether or not
21 it's in that category.

22 Q Okay.

23 A So if it's in that 100 top 25 points which means you
24 can vary from application to application.

25 Q Okay.

1 MR. SHEVORSKI: No further questions. Thank you,
2 Your Honor.

3 THE COURT: Any of the defendants in intervention
4 want to inquire?

5 CROSS-EXAMINATION

6 BY MR. KOCH:

7 Q Good morning, Ms. Amei. My name is David Koch.

8 A Good morning.

9 Q My understanding is you did not do any analysis of
10 the work the evaluators did actually come up with their scores;
11 correct?

12 A May I -- can you --

13 Q You didn't look at the process the evaluators used to
14 determine what score to assign to which category; correct?

15 A Yes.

16 Q You did or did not?

17 A I had the information, like, in each category they
18 evaluate the three levels, excellent and medium and below
19 average.

20 Q Right. So you had this what we call the scoring tool
21 which describes excellent, average and a poor insufficient
22 response; is that right?

23 A Uh-huh. That's correct.

24 Q But did you look at the actual scores that each of
25 the evaluators gave to each of the categories for GBS, for

1 example?

2 A I looked at it here.

3 Q And those I think we put up on the board. Is this
4 the exhibit I think that was shown? There was different --
5 different evaluators gave different points to those categories.
6 For example, the very top one that's listed there --

7 MR. KOCH: Put that back up.

8 UNIDENTIFIED SPEAKER: (Inaudible.)

9 MR. KOCH: Okay. Just as we're about to --

10 BY MR. KOCH:

11 Q Let me ask you while we're switching over. Have you
12 ever taken a Scantron test? You know what those are?

13 A Yeah.

14 Q All right. You ever give your students in college a
15 Scantron test?

16 A I never give them because those are for 100 level
17 classes.

18 Q Okay. Those are more like high school tests; right?

19 A Yeah.

20 THE COURT: For freshmen.

21 MR. KOCH: For a freshmen.

22 THE COURT: She probably doesn't teach freshmen.

23 MR. SHEVORSKI: Or for law school.

24 BY MR. KOCH:

25 Q So let's suppose -- you know what a Scantron test is?

1 A Uh-huh.

2 Q And let's suppose we had that Scantron test the
3 student fills it out and bubbles are filled in cleanly. You
4 run it through a machine, you get a score; right?

5 A Okay. I suppose.

6 Q Let's get another Scantron machine, run the same test
7 through that second machine, what do you expect those two
8 scores to be, same or different?

9 A So you mean I'm feeding the exactly same -- so, yeah,
10 the machine should generate the exactly same score.

11 Q All right. So if the input is the same on an
12 objective measure, the outcome should be the same; correct?

13 A So given that the, like, the mistake because each
14 machine has a false rate so if that's acceptable.

15 Q So there could be a little bit of variability in the
16 machine. It could make a mistake in the bubble that's filled;
17 is that what you're saying?

18 A So that means that there is a chance, but you
19 probably gonna need to know what is that chance maybe one in a
20 thousand or something like that.

21 Q Yeah. That would be a pretty slight chance with the
22 Scantron machine; right?

23 A Uh-huh.

24 Q Okay. Let's look at the exhibit that we put up.

25 MR. KOCH: Which exhibit is this that we had up?

1 UNIDENTIFIED SPEAKER: 220.

2 BY MR. KOCH:

3 Q 220. This is a tally sheet that I think you looked
4 at earlier. Look at this for building construction and this is
5 for GBS. The first category of this is building plan details,
6 and if we look across there there's three evaluators, and they
7 gave 8 points, 9 points and 8 points; right?

8 A Uh-huh. Yes.

9 Q And so you're not here -- you're not testifying that
10 you believe that every evaluator gave the same score to every
11 category for GBS; right?

12 A No.

13 Q Right. So evaluators gave different scores. They
14 were added and an average was given; is that right?

15 A Uh-huh. Yeah.

16 MR. CRISTALLI: Objection. That misstates the
17 evidence.

18 THE COURT: Overruled.

19 MR. KOCH: All right.

20 BY MR. KOCH:

21 Q That's what you understood that the -- the overall
22 number that you were looking at was the -- your analysis, the
23 overall score?

24 A So what I'm looking is this is the so-called
25 nonidentified part which means that each application is

1 supposed to get different scores, but here if you look at the
2 title RD 402 across RD 406 they are five different applications
3 how can you just generate it one sheet --

4 Q Okay. So you --

5 A -- which means all of them are the same.

6 Q I understand. And I think I understand what you're
7 saying. So your testimony is not the evaluators were incorrect
8 or that there's a statistical unlikelihood of evaluators giving
9 an identical score to identical category; it's the same scores
10 to multiple applications that your analysis is based upon?

11 MR. CRISTALLI: Objection. Misstates the evidence.

12 THE COURT: Overruled. You can answer or explain.

13 THE WITNESS: Okay.

14 THE COURT: You can go.

15 THE WITNESS: I can go. Okay. So my hypothesis say
16 the scoring process is blind and randomized --

17 BY MR. KOCH:

18 Q Right.

19 A -- and then --

20 Q And if --

21 THE COURT: Wait. You've got to let her finish.

22 MR. KOCH: Okay.

23 THE COURT: Because that's not the end.

24 BY MR. KOCH:

25 Q Go ahead.

1 A So, yeah. It's a blind and randomized and then the
2 evaluators are evaluating independently.

3 Q So that assumption relies upon, for example, here we
4 have 402 through 406 that's five applications --

5 A Exactly.

6 Q -- so we had those five applications --

7 A Not in the --

8 Q -- shuffled them all up --

9 A Exactly.

10 Q -- and handed them all out to somebody not with each
11 other --

12 A Exactly.

13 Q -- not together; right?

14 A Yes.

15 Q What would happen if those five applications were
16 actually the same application simply with the same --

17 A Same --

18 Q -- that same list of numbers 402 through 406 on one
19 application and it's given to those evaluators?

20 A Then it is not randomized and blind. You're supposed
21 to shuffle all applications.

22 Q So randomized and blind you have an assumption that
23 the process that was used here was to have each application --
24 a separate application distributed out separately?

25 A Yeah.

1 Q Okay. What about if those five applications were
2 actually scored by the same person, would you expect those five
3 applications to get the same score?

4 A So unless this five application come in a order so
5 that after I see the first application I still memorize a
6 little bit about the previous then I can -- when I come to the
7 second application I would know, oh, I just read it, this one.
8 So it's similar probably than he just still use the previous
9 impression to up.

10 Q Right. Nonidentified do you understand what that
11 means in the context of the process that was used here?

12 A Nonidentified means the evaluators -- the reviewers
13 they don't know whose application is applying.

14 Q Right. They don't know which name is on the
15 application; correct?

16 A Exactly.

17 Q It doesn't mean though that the evaluator does not
18 know what was on one application to the next and be able to
19 compare those; is that right?

20 A Only if they are come in the order not if it's --
21 once it's randomized you can't tell.

22 Q You can sit down.

23 A Okay.

24 THE COURT: She's teaching. You guys are a tough
25 audience. You're worse than her regular students.

1 THE WITNESS: Somehow I feel like I'm defending my
2 dissertation.

3 THE COURT: Oh, you're -- it's -- you're fine.

4 (Pause in the proceedings)

5 MR. CRISTALLI: Well, I have -- I have a -- Your
6 Honor, may I?

7 THE COURT: Yes.

8 MR. CRISTALLI: I have a issue with it in that
9 we've --

10 THE COURT: I don't know what it is.

11 MR. CRISTALLI: Yes, I'm sorry.

12 UNIDENTIFIED SPEAKER: (Unintelligible.)

13 THE COURT: I don't want to copy if it's not
14 admitted. I'm your fact finder.

15 MR. CRISTALLI: It appears to be the evaluators'
16 sheets.

17 THE COURT: So these are the notes we discussed last
18 night?

19 MR. CRISTALLI: And the notes.

20 THE COURT: I see nods of the head from the State.

21 MR. CRISTALLI: Yes.

22 UNIDENTIFIED SPEAKER: We produced them that quickly.

23 THE COURT: You're awesome. Okay.

24 MR. KOCH: I think last night there's a production in
25 the MM case that the State made. Some parties are not on the

1 MM service list apparently and so --

2 THE COURT: That's true because we're not in the MM
3 case. We're in the ETW case -- no, we're in the Serenity case.

4 MR. KOCH: We've had the same discussion which one
5 we're in here, but --

6 THE COURT: I am on Case Number A786916 which is the
7 lowest case number assigned to me. So what does that mean to
8 me in the big scheme of things --

9 MR. CRISTALLI: My question is --

10 THE COURT: -- did you get them or not?

11 MR. CRISTALLI: No.

12 THE COURT: Okay. So would you like a few minutes to
13 look at them?

14 MR. CRISTALLI: Yes.

15 THE COURT: Okay. How long is a few minutes for you,
16 Mr. Cristalli?

17 MR. CRISTALLI: Seven and a half minutes.

18 THE COURT: Okay. So we'll take a 10 minute break
19 that means some people can go to the rest room. This is a
20 requested break.

21 So please -- that means don't talk to the lawyers.

22 THE WITNESS: Okay.

23 THE COURT: You can walk around and visit, talk about
24 baseball, talk about school, talk about construction, but don't
25 talk about the case.

1 THE WITNESS: So any lawyers don't talk --

2 THE COURT: Any, don't talk to them.

3 (Pause in the proceedings 9:47 a.m. to 9:53 a.m.)

4 THE COURT: Mr. Cristalli, have you had a chance to
5 review that material?

6 MR. CRISTALLI: Yes, Your Honor, I have.

7 THE COURT: What's the proposed exhibit number?

8 MR. KOCH: I will not be submitting an exhibit
9 (unintelligible) --

10 THE COURT: Okay.

11 MR. CRISTALLI: -- I'd like to show it to the witness
12 for purposes of --

13 THE COURT: You can use anything to refresh a
14 witness's recollection including a cocktail napkin.

15 MR. KOCH: I think --

16 THE COURT: That's an old, old, old case.

17 MR. KOCH: Okay.

18 THE COURT: I think Mr. Gentile teaches it in
19 evidence or something.

20 MR. KOCH: All right.

21 MR. GENTILE: I don't know if I teach it. I try.

22 THE COURT: So you can continue. But please don't
23 give me a copy.

24 MR. KOCH: I am not.

25 / / /

1 BY MR. KOCH:

2 Q Ms. Amei, you indicated that you reviewed some of the
3 scores for the nonidentified portions of the applications;
4 correct?

5 A Yes.

6 Q All right.

7 MR. KOCH: Approach?

8 THE COURT: Uh-huh.

9 You can sit down, ma'am, while you look at that if
10 you'd like. If you're more comfortable standing up you can.

11 BY MR. KOCH:

12 Q I've handed you a document. It states from the top
13 adequacy is size, building plans, base number is DOT 24722
14 through 24747. Have you ever reviewed this document before,
15 ma'am?

16 A So this specific document I have not.

17 Q And the designation on the top right which is already
18 402 through 406 --

19 A Yes.

20 Q -- and below that it says 402, 406 represent to you
21 that those are two of the application numbers that GBS
22 submitted in this -- to the department. Have you ever seen any
23 of these scoring sheets for two application numbers scored
24 together?

25 A Two application -- you mean, nonidentified?

1 Q Right.

2 A Yes, I've seen that.

3 Q Okay. And below they're some comments. I won't
4 necessarily ask what the comments -- do you see the comments
5 that are written there?

6 A Comments here?

7 Q Right.

8 A I didn't see.

9 Q In handwriting it says no building --
10 THE COURT: You can't read it.
11 MR. KOCH: Sorry.

12 BY MR. KOCH:

13 Q Do you see the comments in the handwriting on the
14 first page, ma'am?

15 A Yes. I saw. Uh-huh.

16 Q Okay. And if those are the same comments applied to
17 both application 402 and 406 for purposes of scoring, would you
18 expect the score to be the same on that item for those two
19 applications?

20 A So if the two applications come in a group to the
21 evaluators, when they look at the application I think they will
22 give the similar score.

23 Q Okay. And if we go to a few pages in 24726 --

24 A Which number you're reading?

25 Q If you look at bottom right corner of the page

1 there's some numbers there called Bates numbers. It says
2 DOT --

3 A DOT, uh-huh.

4 Q -- 24726, tell me when you're there.

5 A Yes.

6 Q Okay. You see there's some handwriting again there
7 in the comment sections --

8 A Uh-huh.

9 Q Right?

10 A Uh-huh.

11 Q Yes?

12 A Yes.

13 Q Sorry.

14 A Yes, sorry.

15 Q We try to make a record of what's being said so if
16 you could say yes or no in response to questions.

17 A Yes.

18 Q Those comments -- if those comments again were the
19 same for each of those two applications and scoring were based
20 upon those comments, would you expect to see the same score for
21 those two applications?

22 A Yes.

23 Q All right.

24 A Can I say something? So my hypothesis is saying
25 based on these applications are not come in the group. So, for

1 example, GBS applied for licenses, but when applications that
2 go through the reviewers, the five applications are probably
3 shuffled in all other applications.

4 Q Right. So your conclusion is based upon an
5 assumption that everything came together. If everything did
6 not -- or sorry, that everything was distributed separately --

7 THE COURT: It's called randomizing.

8 THE WITNESS: Exactly.

9 BY MR. KOCH:

10 Q Yeah. If everything was not distributed -- every
11 application was not distributed separately then your conclusion
12 would not apply; right?

13 A Not randomized, in fact, yes.

14 Q So your conclusion would be different in that
15 setting?

16 A Exactly. So the whole statistical hypothesis testing
17 is I'm trying to reject my null hypothesis. Null hypothesis is
18 saying that scoring is blind and randomized because based on
19 the -- so according to the father of the statistic Arie Fisher
20 they said the only way to get rid of bias is by randomizing.

21 Q Right. And you're not here to critique the process
22 used by the State; your analysis is limited to the input or the
23 description that was given to you by the lawyers that you met
24 with; is that right?

25 A Can you repeat the question.

1 Q Did you read any regulations that were applicable to
2 the marijuana application process?

3 A So, yeah, I read the regulations --

4 Q Okay.

5 A -- but the regulation did not say how to score.

6 Q Right. They said that -- they talked about an
7 impartial process; did you read that?

8 A Impartial process -- can you read --

9 Q Do you know what the word impartial means?

10 THE COURT: Can you rephrase your question.

11 BY MR. KOCH:

12 Q Do you know what the word impartial means?

13 A Yes.

14 Q Okay. What does impartial mean to you?

15 A It's not -- it means partially.

16 Q Right. What about -- you read that in the regulation
17 impartial. What about numerically score; did you read that?

18 A I think I read the regulation, but I don't recall
19 this.

20 Q Okay. So you are not providing any opinion with
21 respect to whether the State in its process for scoring
22 applications actually complied with the regulation, are you?

23 A No. So my hypothesis just saying the scoring is --
24 when the scoring process is randomized --

25 Q Right.

1 A -- and blind.

2 Q And with respect to the regulations, did you see the
3 word randomized in there anywhere?

4 A No, I did not.

5 Q Did you see the word blind?

6 A No, I did not.

7 Q Okay.

8 MR. KOCH: Just one more time can we put that exhibit
9 back up, 220.

10 THE COURT: That's the score --

11 MR. KOCH: Scoresheet.

12 THE COURT: Yeah.

13 BY MR. KOCH:

14 Q We looked at that first category. There were some
15 other categories there, and let's go down to care quality
16 safekeeping. Do you see that?

17 A Uh-huh.

18 Q And the first item there is a plan for testing
19 verifying MMJ, and there's three scores there. Can you read
20 those scores you see.

21 A Yeah. 2.0, 1.0, and 3.5, yes.

22 Q Those are three different scores that evaluators
23 gave; is that right?

24 A Exactly.

25 Q Okay. Is that kind of variability something you

1 might expect to see if three different people were scoring?

2 A Yes.

3 Q Okay.

4 MR. KOCH: Can you take that off.

5 BY MR. KOCH:

6 Q And then if we go to the final category in that
7 same -- element 9 procedure for electronic verification system
8 you see three scores, 18.0, 15.0 and 16.0. Once again is that
9 the type of variability you might expect if you had three
10 different people reviewing and scoring?

11 A I think so.

12 Q Okay. What if you had three different people sitting
13 in the same room telling each other what scores to give; would
14 you expect to see those same scores?

15 A It again depends. They can talk, but they have
16 independent or P number and still come up with a score.

17 MR. KOCH: All right. Thank you.

18 No further questions.

19 THE COURT: Any other defendants in intervention wish
20 to inquire?

21 Mr. Hymanson.

22 MR. HYMANSON: Thank you, Your Honor.

23 CROSS-EXAMINATION

24 BY MR. HYMANSON:

25 Q Good morning, Doctor.

1 A Good morning.

2 Q Statistical hypothesis testing, you said in order to
3 come up with an alternative hypothesis you have to presume that
4 something is not true; is that correct?

5 A Yes. So the null hypothesis and alternative
6 hypothesis has to be mutually exclusive.

7 Q So you're only as good as the information you have as
8 you apply your analysis; correct?

9 A Excuse me. Can you reword it.

10 Q Sure. Your analysis can only be as good as the
11 information that you've developed in order to have this
12 alternative hypothesis; correct?

13 THE COURT: Your information is only as good as your
14 data. That's the question you ask a statistician.

15 THE WITNESS: Uh-huh. Yes, exactly.

16 MR. HYMANSON: That's a great question.

17 THE WITNESS: Exactly. Because hypothesis testing
18 this procedure goes I form my null hypothesis and alternative
19 hypothesis and then I use the data which is evidence to reject
20 the null hypothesis using the P value. Yes.

21 BY MR. HYMANSON:

22 Q Should I call you Professor because you stand every
23 (inaudible) is Professor more appropriate than --

24 A That's, okay, yeah.

25 Q Okay. And your presentation is very nice; I

1 appreciate that. But can we assume then based on that analysis
2 that when everything is said and done in this case you can take
3 the final findings from everything you've said and done, be
4 given some additional information for your statistical
5 hypothesis and presume something is not true and come up with
6 another analysis; you could do that on and on, couldn't you?

7 A Presume something is not true, can you explain what
8 that means.

9 Q Sure. If you're given information --

10 A Which is data.

11 Q -- let's say everything is done, all right. Everyone
12 has a license in this case. You take a look at the final data,
13 and you make a presumption that something in that data is not
14 true --

15 A No, I didn't make assumption. So I form -- say this
16 process is what I said, and then under that assumption if I go
17 ahead calculate the probability of seeing this data, which
18 turns out to be that number. So we believe in daily life you
19 don't see an event which has the probability of 2 in a million.
20 So where did this contradiction comes because you assumed that
21 your null hypothesis true. So this lead to the rejection of
22 the null hypothesis.

23 Q So do you have to presume that something is not true
24 in order to do your statistical hypothesis?

25 A No, no, no. So the hypothesis testing procedure is

1 like this. So you form your null hypothesis and alternative
2 hypothesis. When you calculate the P value you are calculating
3 under the now, under the now. So if we assume the null
4 hypothesis is true, in our case we are saying the whole process
5 is blind randomized. Under this assumption if I go ahead and
6 calculate probability of observing such a data is 2 in a
7 million. So then what is the logic behind the hypothesis
8 testing is saying in our daily life you don't just see an event
9 which is happening 2 in a million. So then where this
10 contradiction comes from is because you assumed H nod is true.
11 So therefore the small P value is a strong evidence go against
12 the H nod we reject the H nod.

13 Q Well, that certainly clears it up for me. Tell me
14 have you ever applied this statistical hypothesis alternative
15 theories to bonding issues?

16 A To bonding issue means?

17 Q Yes. Yes.

18 THE COURT: What do you mean by bonding?

19 THE WITNESS: Exactly.

20 MR. HYMANSON: I'll withdraw the question.

21 THE COURT: Okay.

22 Plaintiffs.

23 REDIRECT EXAMINATION

24 BY MR. CRISTALLI:

25 Q Doctor, I'm going to put the exhibit back up which

1 identifies RD 402 through 406 which is GBS Nevada. And counsel
2 asked you about specific areas of the scoring criteria. I'm
3 going to direct your attention to building construction where
4 20 points was allocated where it says under two -- element two
5 it says, Building plan regulatory compliance it says to --
6 Evaluator 1 and Evaluator 2 both gave scores of 7; is that what
7 you see there?

8 A Yes.

9 Q Okay. And they gave scores of 7 across five
10 different applications equally.

11 A Exactly.

12 Q Okay. So that would mean that they would have to
13 have come up with the same conclusion independent of each other
14 which would have resulted in the same score?

15 A I think so.

16 Q But would that be unusual for two scores to come up
17 with the same identical number across five different
18 applications?

19 A So, yeah, across five different application or get
20 score I would only think of the evaluators reading this five
21 applications in the order so remember their looks.

22 Q Okay. And as -- as you discussed in your testimony
23 and in your report your analysis is based on the applications
24 being reviewed independently and randomly; is that correct?

25 A Uh-huh. Exactly.

1 Q Okay. We talked a little bit about the unidentified
2 portion of the application. And the unidentified portion of
3 application would you agree means that there are no identifiers
4 in terms of the applicant?

5 A Yeah, I agree. That's the meaning of nonidentified
6 means.

7 Q Would you also agree that nonidentified would be that
8 it would be scored in an unbiased manner?

9 A Yes.

10 Q When you conduct -- conducted your analysis based on
11 your review of the data specifically on this sheet 402 -- RD
12 402 to RD 406, was the data sufficient for your review to
13 conduct your statistical hypothesis testing and come up with
14 the conclusion?

15 A Yes, because I had five different applications.

16 Q And if you look down at the bottom of the community
17 impact where there was 15 points allocated under Number 2, each
18 one of the evaluators gave the same score of 5; is that
19 accurate?

20 A So, I mean, it is --

21 Q I'm sorry. Is that what it says on the exhibit?

22 A Yes. Yes.

23 Q Okay. And then also if you look down under the time
24 spent to review the five different applications that RD 402
25 through 406 which we've identified as GBS Nevada, it shows, for

1 example, Evaluator 1 under the building construction portion
2 evaluated all five applications in 15 minutes; is that what it
3 says?

4 A So first of all, I don't understand the 0.25 means
5 for five applications or for each of the five applications?

6 MR. CRISTALLI: That's a good question.

7 No further questions, Your Honor.

8 THE COURT: Any further questions from any other
9 plaintiffs?

10 Any questions from the State?

11 MR. PARKER: Thank you.

12 THE COURT: Mr. Parker.

13 REDIRECT EXAMINATION

14 BY MR. PARKER:

15 Q Dr. Amei --

16 A Yes.

17 Q -- I went to introduce some of the variations perhaps
18 in the five applications. And I would like your opinion in
19 terms of whether or not that further supports your position
20 that this was certainly a biased review as opposed to an
21 unbiased review, okay?

22 A Uh-huh.

23 Q And certainly you understand the data would be this
24 additional information that one of the other attorneys asked
25 about and if that would affect your opinion. Do you

1 understand?

2 A Yes.

3 Q So, for example, we have five applications, okay. If
4 each application had a different floor plan would you again
5 expect that there should be different results?

6 A So different floor plan for different locations?

7 Q Exactly.

8 A Yes. So if I look at this five applications that
9 then it's hard to can think of the scores will be exactly the
10 same after two decimal places.

11 Q Thank you. Now, if you had five different locations
12 and five different security plans for each location, would it
13 also make it difficult to believe that the variation would be 2
14 in a million?

15 A Oh, this I never calculated that this renovation is 2
16 in a million.

17 Q So let's think about that -- the variations. Five
18 applications, five different floor plans, five different
19 security plans and all the same score --

20 A Exactly.

21 Q -- does that make any sense to you when you consider
22 the alternative hypothesis versus the null hypothesis you
23 started with?

24 A Uh-huh.

25 Q Doesn't it reinforce the point that this could not

1 have been an unbiased review?

2 A I do not understand the --

3 THE COURT: Can you rephrase your question,
4 Mr. Parker.

5 MR. PARKER: Certainly I can.

6 MS. SHELL: Your Honor, before he rephrases can I
7 just object, that's leading.

8 THE COURT: Overruled.

9 MR. PARKER: Thank you.

10 BY MR. PARKER:

11 Q So you came up with your position or your opinion
12 based upon an evaluation of five applications; is that correct?

13 A Yeah. Yes.

14 Q All right. And then your overall opinion being that
15 based upon these similar scores across five different
16 applications that it was unlikely, very unlikely that this
17 scoring was done in a randomized way or was unbiased; is that
18 correct?

19 A Or blinded, yes.

20 Q Thank you.

21 A Yes.

22 Q Now, you start off with, and I've heard this many
23 times, that the only way to remove [unintelligible] bias is to
24 do a randomized approach; is that correct?

25 A Exactly.

1 Q Which means randomized would include not grouping all
2 five applications together --

3 A Yes.

4 Q -- isn't that correct?

5 A That is correct.

6 Q So if you start out by grouping only applications
7 together, you've already negated the whole premise of
8 nonidentified because -- isn't that correct?

9 A I think so.

10 Q So you can't have a nonidentified if you give all
11 five applications to one person at the same time because that
12 person will have reviewed and had the impression of one after
13 the other after the other; is that correct?

14 A That is correct.

15 Q So from the beginning of the process, if the State
16 gave one reviewer all at one time they've already prevented
17 this from being a nonidentified review; is that correct?

18 A Yes.

19 Q Okay. Now I'm a little surprised that you're still
20 standing down -- standing -- sitting (inaudible.) That was my
21 military branding that says standing down. All right.

22 So now we've gone over the beginning of the process
23 not being nonidentified if they did it that way. If they gave
24 one reviewer all five at one time they removed this whole
25 nonidentified concept; is that correct?

1 A Yes, if they gave the five same time the reviewers
2 can easily imply they are from the same company.

3 Q Thank you. And so while you were teaching all of us,
4 I was trying to consider a reference I've heard before in the
5 construction business. A statistician would say if we had the
6 exact same house and the exact same floor plan, we had the
7 exact same problem, it would be the same problem in every
8 house --

9 THE COURT: That's called representative.

10 MR. PARKER: It is.

11 BY MR. PARKER:

12 Q And so some plaintiff attorneys would say, well, if
13 that's the case we don't have to check every house.

14 THE COURT: Let's not talk about extrapolation,
15 Mr. Parker, that's not part of this hearing.

16 MR. PARKER: That is true. But I want to lay some
17 groundwork for the next question, Your Honor.

18 BY MR. PARKER:

19 Q So, Doctor, if a -- one reviewer saw the same
20 application and five minutes later saw the next application
21 which was identical, you would then perhaps expect that that
22 reviewer would give the same, perhaps the same score?

23 A Yes.

24 Q A better chance at least?

25 A Exactly. Higher chance.

1 Q Right. But if that same evaluator saw an application
2 with a different floor plan, a different security plan, a
3 different location, a different community, would you expect
4 that same evaluator to give the exact same score?

5 A Probably not the same score.

6 Q So no matter how you look at it being the same five
7 evaluators or one evaluator the likelihood that any evaluator
8 if it's not randomized would come up with the same score is
9 very unlikely, isn't it?

10 A Yes. As long as it's not randomized you are correct.

11 MR. PARKER: Thank you so much.

12 THE COURT: Any more, Mr. Shevorski?

13 MR. SHEVORSKI: Very briefly, Your Honor.

14 THE COURT: Do you know what representative and
15 extrapolate are?

16 MR. SHEVORSKI: You know, I use to work with
17 Mr. Stolworthy, so a little bit.

18 THE COURT: Yeah. Not in this case, please.

19 MR. SHEVORSKI: Your Honor, I'm having nightmares
20 about windows.

21 THE COURT: Uh-huh.

22 RE CROSS-EXAMINATION

23 BY MR. SHEVORSKI:

24 Q I believe my friend Mr. Parker mentioned, used the
25 term impartially used the term biased, do you recall when he

1 asked you about that?

2 A Biased, I recall. Uh-huh.

3 Q Okay. Does the word biased appear in any of the
4 statutes that you reviewed?

5 A Any of the -- no.

6 Q Okay. With respect to the word impartial that's the
7 word I used, is that defined anywhere in the statutes that you
8 reviewed?

9 A Not I recall.

10 Q And my friend Mr. Parker mentioned different floor
11 plans, and I think we already discussed that you don't have any
12 independent ability based on your background to evaluate
13 whether one floor plan is different in a meaningful way from
14 another floor plan for based on construction -- construction
15 experience?

16 A Even though I don't have a background, but by reading
17 I think I can get a rough idea if they are the same or not the
18 same but not professionally.

19 Q Okay. And the only person you talked to about that
20 would be a group of lawyers and one representative from GBS --

21 A Yes.

22 Q -- so one applicant out of all the applicants that
23 applied for these conditional licenses; is that correct?

24 A That is correct.

25 MR. SHEVORSKI: No further questions.

1 THE WITNESS: Can I say something?

2 MR. SHEVORSKI: Oh, please do. I'm sorry.

3 THE WITNESS: In addition to GBS, I think I also look
4 at the -- just the tally sheet some other applications some of
5 them also have identical scores, but I do not have information
6 regarding their true application.

7 MR. SHEVORSKI: Okay. Thank you very much.

8 THE COURT: Mr. Koch.

9 RECROSS-EXAMINATION

10 BY MR. KOCH:

11 Q Ms. Amei, Mr. Parker asked you about that floor plan
12 issue. Do you know if the shape of the floor plan was scored
13 by evaluators?

14 A If I -- excuse me?

15 Q Do you know if the shape of the floor plan was scored
16 by evaluators?

17 A Scored by -- I don't know about the detail.

18 Q Do you know if the square footage of the floor plan
19 was scored by evaluators?

20 A No. I don't know.

21 Q And if we had let's say there were 10 factors that an
22 evaluator was scoring and there were an 11th and 12th item that
23 they did not score, would any variability in the 11th and 12th
24 item have any effect in the scores in your expectation?

25 A Will be not.

1 Q No effect?

2 A Uh-huh.

3 Q Let's suppose having a hand sink in each floor plan
4 was a requirement and would be scored. If two different
5 applications did not have a hand sink, would you expect the
6 score to reflect that equally for both applications?

7 A So the hand sink is supposed to be evaluated; right?

8 Q Right. It's a requirement.

9 A And they are different?

10 Q And neither application has the hand sink would you
11 expect both of those could be scored equal on that item?

12 MR. CRISTALLI: Objection. Is -- it calls -- I'm
13 sorry, Your Honor.

14 THE COURT: I'm waiting.

15 MR. CRISTALLI: It calls for evidence that has not
16 been admitted.

17 MR. KOCH: It's called a hypothetical.

18 THE COURT: Overruled.

19 MR. KOCH: All right.

20 BY MR. KOCH:

21 Q So the answer was yes, you believe they would be
22 scored equally if they had the same problem?

23 A Can you repeat the question.

24 Q If both floor plans lacked a hand sink and a hand
25 sink was a requirement, would you expect the scores for the

1 item to be the same on both applications?

2 A Yes, for the item, yes.

3 Q I asked you about Scantrons before and you said
4 that's hundred level. In your class I assume you give tests
5 that have right and wrong answers; correct?

6 A No. They just they need to show their work to get to
7 the solution.

8 Q If you asked your students to come up with a P value
9 for a particular problem, would there be a right or a wrong P
10 value for that problem?

11 A For that specific problem, yes.

12 Q All right. And if you had two different students
13 hand in their test and they both had the same P value, would
14 you give them the same score?

15 A Yes.

16 MR. KOCH: Thank you.

17 THE COURT: Any other defendants?

18 Any other plaintiffs?

19 MR. CRISTALLI: Your Honor, I just have one follow-up
20 question, I promise.

21 FURTHER REDIRECT EXAMINATION

22 BY MR. CRISTALLI:

23 Q Dr. Amei, counsel had referenced floor plans,
24 referenced hand sinks. In the criteria in the tally sheet
25 there is also a reference to detailed budgets. And you -- you

1 understand what a budget is; right?

2 A Yes.

3 Q And in this case you've got five different
4 applications and five different jurisdictions with the
5 testimony we've had those budgets would be different. Budgets
6 contain numbers?

7 A Yes.

8 Q You would agree with me?

9 A Yes.

10 Q And each one of those applications would contain
11 different budgets with different numbers?

12 A That is correct.

13 Q You would assume if the evaluators were evaluating
14 those budgets randomly, independently without bias that those
15 scores would be different?

16 A Exactly.

17 MR. CRISTALLI: No further questions.

18 THE COURT: Any more?

19 MR. SHEVORSKI: Nothing from the State, Your Honor.

20 THE COURT: Thank you, Doctor, we appreciate your
21 time. I may have been the only one in the room who understood
22 it. Have a great day. Bye.

23 THE WITNESS: Should I leave this here; right?

24 MR. KOCH: I can -- I probably should take that back
25 because it's my document.

1 THE COURT: Yeah, I don't want that.

2 Thank you again.

3 THE WITNESS: Thank you, Your Honor.

4 THE COURT: Does anyone need a break before we
5 restart?

6 MR. SHEVORSKI: Not the State, Your Honor.

7 THE COURT: Oh, wait a minute?

8 MR. GENTILE: Your Honor, we have a scheduling
9 problem. May we have a moment to discuss it with defense here?

10 THE COURT: Before Mr. Gilbert comes up or after?

11 MR. GENTILE: Before he does actually because what
12 we -- we have Dugan this afternoon.

13 (Pause in the proceedings)

14 MR. GENTILE: Your Honor, what we would propose to
15 do -- it's not my witness, but what we would propose to do
16 because of the issue with the witness or perhaps nonwitness,
17 but at least subpoenaed person Dugan --

18 THE COURT: Uh-huh.

19 MR. GENTILE: -- we have a need to change our
20 sequence a little. And so we would like to have Mr. Thomas
21 testify before Mr. Gilbert.

22 THE COURT: How long do you anticipate Mr. Thomas's
23 testimony?

24 MR. GENTILE: I don't know it's Mr. Cristalli's
25 witness.

1 MR. CRISTALLI: I'm sorry, Your Honor.

2 THE COURT: How long, Mr. Cristalli? Mr. Thomas can
3 talk a lot, I've heard him over the years.

4 MR. CRISTALLI: An hour.

5 THE COURT: And he's promising to be quick today I
6 can tell.

7 MR. CRISTALLI: Yes, an hour, Your Honor.

8 MR. GENTILE: In which case we would put Mr. Gilbert
9 on right after they go to lunch.

10 THE COURT: All right.

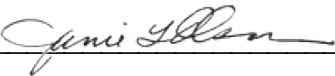
11 Mr. Thomas, come on up.

12 -oOo-

13 ATTEST: I do hereby certify that I have truly and correctly
14 transcribed the audio/video proceedings in the above-entitled
15 case.

16

17



18

Janie L. Olsen
Transcriber

19

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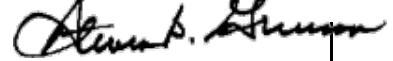
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TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

SERENITY WELLNESS CENTER LLC,.
et al.

Plaintiffs

vs.

STATE OF NEVADA DEPARTMENT OF
TAXATION

Defendant
.

CASE NO. A-19-786962-B

DEPT. NO. XI

**Transcript of
Proceedings**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

**EVIDENTIARY HEARING - DAY 5
VOLUME II**

FRIDAY, MAY 31, 2019

COURT RECORDER:

JILL HAWKINS
District Court

TRANSCRIPTION BY:

FLORENCE HOYT
Las Vegas, Nevada 89146

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

APPEARANCES:

FOR THE PLAINTIFFS:

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ROSS MILLER, ESQ.
WILLIAM KEMP, ESQ.
NATHANIEL RULIS, ESQ.
ADAM BULT, ESQ.
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STEVE SHEVORSKI, ESQ.
THERESA HAAR, ESQ.
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ERIC HONE, ESQ.
DAVID KOCH, ESQ.
ALINA SHELL, ESQ.
JARED KAHN, ESQ.
PHILIP HYMANSON, ESQ.
JOSEPH GUTIERREZ, ESQ.

ALSO PRESENT:

CHRISTIAN BALDUCCI, ESQ.
For Stacey Dougan

1 LAS VEGAS, NEVADA, FRIDAY, MAY 31, 2019, 10:23 A.M.

2 (Proceeding in progress)

3 THE COURT: All right. Mr. Thomas, come on up.

4 DAVID THOMAS, PLAINTIFFS' WITNESS, SWORN

5 THE CLERK: Please be seated. Please state and
6 spell your name for the record.

7 THE WITNESS: David, D-A-V-I-D, Thomas, T-H-O-M-A-S.

8 THE COURT: Mr. Thomas, you've been in here before.
9 There's water in the pitcher, there's binders behind you,
10 there's M&Ms there. Let's see if we can get you done so I can
11 get back to the other witness.

12 Mr. Cristalli.

13 MR. CRISTALLI: Thank you, Your Honor.

14 DIRECT EXAMINATION

15 BY MR. CRISTALLI:

16 Q Good morning, Mr. Thomas. Could you tell us a
17 little bit about your background, starting with your
18 education?

19 A I'm a lawyer. I went to -- graduated from the
20 University of Utah and then went to the University of Toledo
21 Law School, graduated there in 1984 and I've practiced law in
22 various other jurisdictions. Ultimately in the 1990's I
23 became in-house counsel for the Maloof family or what was
24 Maloof companies. And my connection with Las Vegas was I
25 helped them get the Fiesta Casino, which ultimately went to

1 the Palms Casino, and the purchase of the Sacramento Kings
2 basketball team by the family in 1998. And that activity --
3 their headquarters were in Albuquerque at the time but then
4 they were moving to Las Vegas, got me into Las Vegas.

5 And then in the -- after I left the Maloofs I
6 changed direction with my career from practicing law to being
7 involved in political campaigns, first initially with
8 congressional campaigns across the western United States and
9 then moved into doing campaigns in the state of Nevada, and
10 I've run a company that's done that for the last 19 years.

11 Q Thank you. And did there come a point in time that
12 you got involved in the marijuana industry in the state of
13 Nevada?

14 A Yes. I was a part of an original group in 2013 to
15 proceed with an application for medical marijuana. We pursued
16 that. In 2014 we received from the State a cultivation and
17 production license in 2014 and then in 2015 through
18 legislative action we received our dispensary license.

19 Q Okay. And is that company Nevada Pure, LLC?

20 A Yes, it is.

21 Q Okay. And what is your position with Nevada Pure,
22 LLC?

23 A I am one of the five operating managers and I am the
24 largest owner at this time.

25 Q Okay. And as an owner and now managing operator,

1 what are your roles and functions in the company?

2 A Going over the general budget that we have on a
3 weekly basis, hiring, contracts, new product lines, expansion
4 plans, general oversight as the business grows and expands.

5 Q And you were involved in the business when licensing
6 occurred under the medical marijuana legislation in 2014?

7 A Yes.

8 Q Okay. And you were involved during that period of
9 time in working with your staff to put together an application
10 for submission for the medical marijuana licenses?

11 A Yes.

12 Q And you are familiar with the processes associated
13 with the medical marijuana licensing?

14 A Yes.

15 Q Okay. Now, were you equally involved in the 2018
16 licensing process for retail licenses?

17 A Yes.

18 Q Okay. Can you tell me a little bit about -- well,
19 first of all, tell me a little bit about the company, Nevada
20 Pure LLC, where it's located and what type of business you
21 have at that location.

22 A Well, it's located at 4380 South Boulder Highway.
23 It's in a facility that's 7,200 square feet. I believe it
24 still is the -- with all three licenses in that building, I
25 believe it's still the second largest fully-integrated

1 facility in the state as far as we do cultivation, production
2 and retail within that same space. I know from our application
3 process I think our location is one that has a higher level of
4 potential criminal activity than most locations that are in
5 Clark County, so there's some challenges with that that we've
6 worked out but we've never had an incident, so that's good.

7 Q So would it be safe to say that your location where
8 that facility is located would be different than a location,
9 say, you know, close to Summerlin, maybe, near Jones and 215
10 or something to that effect as far as geographic locations?

11 A Yes.

12 Q So would you agree that each jurisdiction would
13 bring different challenges with regard to the operation of a
14 retail establishment, marijuana establishment?

15 A Yes.

16 Q Okay. How many applications did you submit for the
17 2018 application process and in what jurisdictions?

18 A Two. One in Las Vegas and one in the county.

19 Q And what was your understanding of the requirements
20 for the locations in the jurisdictions that you were applying
21 in?

22 A That we needed to secure a facility to go forward
23 with the application.

24 Q Why did you think that?

25 A From what I had read as far as the regulations, the

1 statute, and even the intent of the initiative.

2 Q In fact, the legislation specifically says that you
3 need a physical address where the proposed marijuana
4 establishment will operate, is that true?

5 A Yes.

6 Q Does the legislation also require additional
7 information for a particular location, such as zoning issues?

8 A Yes.

9 Q Can you develop -- can you expand on that?

10 A Well, there's an excluded area. I think it's --
11 some of the basic things, you have to be like 1,000 feet from
12 a school, 600 feet from a park, so there's various parts of
13 the -- of any jurisdiction where you can't locate a marijuana
14 facility, and you need to do a lot of study and research and
15 examination of real estate to come up with appropriate places.
16 For example, we wanted to have an application for North Las
17 Vegas, but after going through and inspecting and reaching out
18 on 14 different properties, we could not find one that either
19 the landlord would agree to a lease to a marijuana company or
20 it was an excluded territory so it wouldn't qualify for being
21 accepted by the local jurisdiction.

22 And that's sort of a fundamental thing to proceed on
23 an application because if you haven't already secured a place
24 that's outside of an excluded area, you don't even know
25 whether you can get the property to proceed with having a

1 retail space. And we did that type of study throughout that
2 whole process. I know I have a reputation of being talkative,
3 but I will add one additional point as far as what we did in
4 the City. We went directly to Bob Coffin, who's our city
5 council person. I did myself and had three visits with him to
6 review property to make sure that we would ultimately go
7 forward with property in our application that met two
8 criteria. One, Bob Coffin would approve it as we went
9 forward, and two, it was in a non-excluded area.

10 Q So in the process of you securing locations for the
11 jurisdictions that you were applying in, there was a
12 considerable amount of due diligence that went into that to
13 make sure that you were in compliance with the statute and the
14 regulations?

15 A Yes.

16 Q Okay. In addition to -- and, by the way, as I think
17 you testified, that in other jurisdictions you could not
18 secure locations because of those -- whether or not a landlord
19 wanted to give you a letter of intent or some other issues
20 with regard to community prohibitions?

21 A That's correct.

22 Q In addition to the due diligence that you were
23 performing to find a location in a particular jurisdiction, in
24 the two jurisdictions that you applied in did you have to
25 secure property locations?

1 A Yes.

2 Q What did you do to secure property locations?

3 A We came up with memorandums of understanding with
4 both business owners and their buildings and we had an
5 agreement and we gave them deposits to keep those properties
6 secure for us for leases provided we were awarded a license.

7 Q And did you have to give money to secure those
8 locations?

9 A For both of them we did.

10 Q And could you tell me how much you had to give for
11 each jurisdiction that you applied in, and identify the
12 jurisdictions?

13 A Yeah. Las Vegas I believe was \$15,000 and the
14 County was also \$15,000.

15 Q All right. Are you still under the letter of intent
16 on both of those properties?

17 A No, we are not.

18 Q Are you under the letter of intent on either of
19 those properties or the memorandum of --

20 A Understanding. No. The time has passed.

21 Q Okay. Did you get your \$15,000 back and your
22 \$25,000 back?

23 A I think they were both \$15,000.

24 Q I'm sorry.

25 A We did not.

1 Q So that money is gone?

2 A Yes.

3 Q And that property is gone?

4 A Correct.

5 Q And you would agree that property is unique?

6 A Yes.

7 Q Especially as it relates to locations for retail
8 marijuana facilities?

9 A Yes.

10 Q Okay. You also were involved with the application
11 process?

12 A Yes.

13 Q You're familiar with the application?

14 A Yes, I am.

15 THE COURT: Hold on a second, Mr. Cristalli.

16 MR. CRISTALLI: Yep.

17 THE COURT: Okay, you can continue. I may have to
18 take a short break. You don't have to leave. I have to do a
19 deposition intervention.

20 MR. CRISTALLI: You have to leave?

21 THE COURT: No.

22 MR. CRISTALLI: Oh.

23 THE COURT: I will do it from sitting right here --

24 MR. CRISTALLI: Okay.

25 THE COURT: -- if I have to.

1 MR. CRISTALLI: Thank you.

2 THE COURT: Dan is getting me more information.

3 MR. CRISTALLI: Okay.

4 THE COURT: Keep asking questions.

5 MR. CRISTALLI: I will.

6 Shane, can you pull up 5? This is Plaintiff's
7 Exhibit Number 5. Specifically if you go, Shane, to page 10,
8 tab 4, where it references Attachment A.

9 BY MR. CRISTALLI:

10 Q Do you see that?

11 A Uh-huh. Yes, I do.

12 Q And it references Recreational Marijuana
13 Establishment License Application and then in parentheses it
14 says, Attachment A.

15 MR. CRISTALLI: So now I'd like, Shane, if you
16 could, go to Attachment A, which is on page 29.

17 BY MR. CRISTALLI:

18 Q Mr. Thomas, do you see that?

19 A Yes.

20 Q Oh, it's not up yet. Sorry about that. Give me a
21 second. That's the wrong page. Sorry. I got it. Yes, 21.

22 BY MR. CRISTALLI:

23 Q Page 21, specifically where it starts, "Marijuana
24 establishment's proposed physical address. If the applicant
25 owns property or has secured a lease or other property

1 agreement, this must be a Nevada address and cannot be a P.O.
2 box." Do you see that?

3 A Yes.

4 Q Is that the Attachment A that you filled out and
5 submitted to the State for your application?

6 A Yes.

7 Q Okay. Are you sure?

8 A Well, here's the difficulty. What I have on the
9 screen is what we submitted to the State. What you said
10 verbally to me I think is different.

11 Q Okay. So now I'm going to pull up -- I'm going to
12 ask Shane to pull up Exhibit -- I think it's next in order,
13 which was 222, if I'm not mistaken.

14 THE CLERK: That's proposed.

15 MR. CRISTALLI: I think the State and the
16 intervenors have agreed to its admission.

17 THE COURT: Is that correct?

18 MR. SHEVORSKI: That's correct.

19 MR. CRISTALLI: We move to --

20 THE COURT: Apparently not. Mr. Koch needs to talk.

21 MR. KOCH: I think so.

22 THE COURT: While Mr. Koch is thinking about that,
23 Dan is going to dial the deposition and I'm going to resolve
24 their issue for them.

25 MR. CRISTALLI: Okay.

1 THE COURT: You're welcome to stay where you are.
2 It shouldn't take more than three minutes once I get them to
3 identify themselves.

4 (Briefly off the record)

5 THE COURT: All right. Are we ready? Okay. Sorry
6 for the interruption.

7 (Off-record colloquy)

8 THE COURT: Keep going, Mr. Cristalli.

9 MR. CRISTALLI: Thank you.

10 Shane, can you put up -- I think it's 222 now.

11 And I think I moved for its admission, Your Honor.

12 MR. KOCH: No objection.

13 MR. CRISTALLI: But if I didn't, I move for its
14 admission now.

15 THE COURT: Is there an objection, Mr. Koch?

16 MR. KOCH: No objection.

17 THE COURT: It will be admitted.

18 MR. CRISTALLI: Thank you.

19 (Plaintiff's Exhibit 222 admitted)

20 BY MR. CRISTALLI:

21 Q Okay. Mr. Thomas, that document that's now been
22 admitted as Plaintiffs' 222 says Attachment A. Is that right?

23 A Yes.

24 Q Recreational Marijuana Establishment Application,
25 General Information?

1 A Yes.

2 Q And it in the second box says, "Marijuana
3 establishment's proposed physical address. This must be a
4 Nevada address and cannot be a P.O. box." What address is
5 under there?

6 A 5525 Polaris Avenue, Suite 100.

7 THE COURT: 4425.

8 MR. CRISTALLI: Yeah.

9 THE WITNESS: Oh. 4425 Polaris Avenue, Suite 100.

10 BY MR. CRISTALLI:

11 Q Okay. And going down to the applying entity
12 information under Applying Entity's Name, what does it say?

13 A Applying Entity's Name, Nevada Pure LLC dba Shango
14 Las Vegas.

15 Q Who is that?

16 A That's us.

17 MR. CRISTALLI: Okay. Shane, can you now put 5,
18 Attachment A and then this against each other?

19 BY MR. CRISTALLI:

20 Q Now, you can see the difference between those two
21 attachments and that one has your information and one doesn't
22 have your information. Would that be accurate?

23 A That's correct.

24 Q Okay. In fact, if you look in the identifying
25 portion of that attachment, it has the address, 4425 Polaris

1 Avenue, Suite 100, which is your address?

2 A That's the proposed address of the facility.

3 Q Okay. Above that or right in that same box, right
4 above it what does it say?

5 A Recreational --

6 Q No, I'm sorry. Where it starts, "Marijuana
7 establishment's proposed physical address. This must be a
8 Nevada address and cannot be a P.O. box." Is that what it
9 says?

10 A Correct.

11 Q And that's your Attachment A that went on your
12 application that you submitted to the Department of Taxation
13 for your 2018 retail marijuana establishment?

14 A Yes, it is.

15 Q Okay. Can we look at now what's next to it, which
16 is Exhibit 5, which doesn't have your identifiers on it, in
17 the same area it says, "Marijuana establishment's proposed
18 physical address if the applicant owns property or has secured
19 a lease or other property agreement."

20 A Well, I'm still not seeing that on my screen. I'm
21 seeing a similar -- there's something wrong because -- that's
22 what's confusing.

23 MR. CRISTALLI: Do you have Attachment 5, exhibit --

24 I.T. TECHNICIAN: I have 5A because -- [inaudible].

25 THE COURT: He's got the same display I have.

1 MR. CRISTALLI: Yeah.

2 UNIDENTIFIED SPEAKER: He doesn't have the digital
3 file. We've just got their copies.

4 MR. CRISTALLI: Oh.

5 THE WITNESS: I'm not -- that's the problem. I'm
6 not seeing the right slide.

7 MR. CRISTALLI: Okay. Well, that's all right, I can
8 do it without it.

9 UNIDENTIFIED SPEAKER: I think Dulce has 5A.

10 MR. CRISTALLI: Dulce has it?

11 THE COURT: Would you like the witness to get 5A?

12 MR. CRISTALLI: Yes, I would. Sorry about that. I
13 thought we had it.

14 THE COURT: Where in the book is it?

15 THE CLERK: Volume 1.

16 THE COURT: The first volume. Mr. Thomas, on the
17 back shelf there behind you, the first volume.

18 Is it in the very back of the book?

19 THE CLERK: No, it's under -- there's 5 and then 5A.

20 THE COURT: It's behind 5.

21 THE WITNESS: Volume 1?

22 THE COURT: Volume 1.

23 MR. CRISTALLI: Sorry, Your Honor.

24 THE COURT: It's okay. This is what happens when we
25 do preliminary injunction hearings without discovery.

1 Thank you, Dulce. Good job. I'm staying out of it.

2 Mr. Thomas, have you found what you were looking for
3 in Volume 1?

4 THE WITNESS: I'm almost there.

5 THE COURT: Okay.

6 THE WITNESS: Yes, now I'm there.

7 THE COURT: Okay.

8 BY MR. CRISTALLI:

9 Q So you have the application in front of you, but not
10 the specific page?

11 A No. I actually have -- I went to Attachment A, the
12 first page.

13 MR. CRISTALLI: Okay. I do believe we have it, Your
14 Honor. It's 2019, if we could pull that up.

15 THE COURT: It's okay with me.

16 MR. CRISTALLI: Thank you.

17 THE COURT: Is 2019 admitted, Dulce?

18 THE CLERK: It is.

19 THE COURT: Okay. So if we go to 2019, which
20 appears to be the same document as 5A.

21 Do you want them side-by-side, still, Mr. Cristalli?

22 MR. CRISTALLI: That would be great.

23 THE COURT: Look at Shane.

24 I.T. TECHNICIAN: I'm sorry, Mr. Cristalli, I don't
25 have 2019.

1 MR. CRISTALLI: Oh, you don't have that. Okay, so
2 we need to switch back and forth. That's okay.

3 BY MR. CRISTALLI:

4 Q In the -- I think we do make the point. In the box
5 on Attachment A where it references the address, in front of
6 you that you have, what is the language there?

7 A It says, "Marijuana establishment's proposed
8 physical address if the applicant owns property or has secured
9 a lease or other property agreement. This must be a Nevada
10 address and cannot be a post office box or a P.O. box."

11 Q Okay, thank you. That language in that Attachment A
12 is different than the language in Attachment A that you
13 submitted to the Department of Taxation for your application
14 for the 2019 retail marijuana establishment licenses?

15 A Yes, it is.

16 Q Did you know that there were two different
17 applications with two different requirements as it related to
18 locations?

19 A I did not. I did not at the time that we did the
20 application.

21 Q When did you learn about the fact that there were
22 different applications that required different information
23 regarding locations?

24 A Last night in conversation with you.

25 Q So in this version of the application, Attachment A,

1 it appears that you don't need a location?

2 A That's correct.

3 Q But it also says that you cannot use a P.O. box?

4 A That's correct.

5 Q So while you were out there doing your due diligence
6 securing locations and having to surrender on certain
7 locations because of restrictions, other applicants who are
8 competing in this process did not have to abide by those same
9 requirements. Is that a fair statement?

10 A Yes.

11 Q Do you have any thoughts about that?

12 A My only thoughts are it's very clear from the
13 experience that we had in North Las Vegas that it was not an
14 easy task to go to the various jurisdictions and secure a
15 location that would qualify and it required -- because it was
16 a two-prong process. You'd have to get a location that would
17 qualify potentially with the State, but then you'd have to
18 talk to the local jurisdiction as well so that you knew that
19 if you actually were awarded a license you had a high
20 probability that you could proceed with it within that
21 jurisdiction through their zoning process.

22 MR. CRISTALLI: Okay. Your Honor, I am going to
23 proposed Plaintiff's next in order, which the intervenors and
24 the State have agreed to admit.

25 THE COURT: What is the next in order?

1 THE CLERK: That will be 223.

2 THE COURT: Any objection to 223?

3 MR. SHEVORSKI: No objection, Your Honor.

4 THE COURT: 223 will be admitted.

5 (Plaintiffs' Exhibit 223 admitted)

6 MR. CRISTALLI: Shane, let me know if you have it.

7 If you do, you can put it up.

8 I.T. TECHNICIAN: I do.

9 MR. CRISTALLI: Your Honor, may I approach with --
10 well, move for its admission.

11 THE COURT: I already admitted it based on the
12 stipulation.

13 MR. CRISTALLI: Thank you. Sorry. May I approach?

14 THE COURT: You may.

15 BY MR. CRISTALLI:

16 Q Mr. Thomas, I'm going to show you what's been now
17 admitted as Plaintiffs' 223. That is an application checklist
18 from October through November of 2018 taken from the
19 Department of Taxation in regard to the marijuana retail
20 establishment applications. Would you take a look at it and
21 tell me whether or not you're familiar with that?

22 A I am.

23 Q Okay. Moving your attention to -- well, let's talk
24 about all of them. Well, actually, let's go down to Landlord
25 Approval Letter. Do you see that section?

1 A Yes.

2 Q What does that say?

3 A "Landlord Approval Letter. Provide documentation in
4 the form of a letter signed by the property owner or a copy of
5 a lease signed by property owner indicating approval of
6 marijuana establishment operating at said property address."

7 Q And that came from the Department of Taxation,
8 Marijuana Division?

9 A Yes.

10 Q And as an owner of Nevada Pure, LLC and somebody who
11 is involved with the operations, you understood those to be
12 your guidelines with regard to the application requirements?

13 A Yes.

14 Q Specific to location?

15 A Yes.

16 Q And at some particular point in time in the
17 licensing process, that changed, didn't it?

18 A It appears so.

19 Q And you don't have any knowledge of being informed
20 directly by the Department of Taxation of that change?

21 A We do not, or I do not.

22 Q Okay. Let's go back to Exhibit 5, which is the
23 application, specifically page 13, tab 3, wherein it talks
24 about building establishment information. What was your
25 understanding of the requirements that Nevada Pure had to

1 abide by with regard to the locations that you were -- in the
2 jurisdictions you were applying in with regard to your
3 building, your structure, your budgets, so forth and so on?

4 A We had to present a floor plan that was unique to
5 the property that we had secured and then all the other
6 requirements of a security plan, the layout, the signage, the
7 community impact based on the community where that building
8 was located. I know with our property that we have with
9 Shango we do a lot of donations to homeless organizations
10 because we have a large homeless population around us. We
11 even put boxes out to get supplies because we're a part of the
12 Southeast Area Command. That's where all the local businesses
13 that are on Boulder Highway -- they give us some direction as
14 to what are the needs of that particular community. And so
15 each location we figure we have potentially a different
16 community impact.

17 Q And when you were looking for locations and securing
18 those locations by putting money down and finding a location
19 that would fit within that jurisdiction in regard to the
20 zoning requirements, did you consider the community impact for
21 that particular location, the security plans for that
22 particular location, the size, the budget, things that are
23 specific to that particular location in that particular
24 jurisdiction?

25 A Yes. And the Polaris location that you pulled up,

1 for example, we had secured an additional space to it because
2 we assumed because of the close proximity we would have to the
3 Strip, you just basically go over the Harmon bridge and you're
4 there and it's right away from -- across from where the
5 Bellagio is, that there could be tourists that would want to
6 go over to a potential lounge that would be next to our
7 dispensary. So that would be a component of our plan because
8 that would serve the needs of people that are potentially on
9 the Strip and you have a large population there. So you would
10 definitely propose a possible lounge at that space, where the
11 other application was at a different place and the need or the
12 view that a lounge would be useful over there was not part of
13 the application.

14 Q What about budgets? Do they change from location to
15 location, jurisdiction to jurisdiction?

16 A Yes. Construction budgets, yes.

17 Q So the numbers would be different?

18 A Yes.

19 Q Depending on the facility?

20 A Yes.

21 Q Security details would be different?

22 A Yes.

23 Q And you took all that into consideration and because
24 there are point allocations specifically for those details,
25 weren't there?

1 A Yes.

2 Q So you thought by providing that information to the
3 Department of Taxation for, you know, the review of your
4 application, the better, more expansive, more detailed you
5 were on those areas, the better chances you would have in
6 getting a good score?

7 A Yes.

8 Q And at some particular point in time, as we've
9 discussed, you found out that some applicants did not do that
10 type of due diligence or submit that type of detailed
11 information as it related to the jurisdictions they were
12 applying in?

13 A That's my understanding.

14 Q And that they submitted a generic floor plan with
15 generic budgets that were used for each jurisdiction that they
16 applied in?

17 A Yes.

18 Q Some of which who applied in, you know, ten
19 jurisdictions?

20 A Again, that's my understanding.

21 Q Let me ask you another question, Mr. Thomas. Did
22 you think that Nevada Pure, LLC under the same organizational
23 structure could create two different LLCs, apply in one
24 particular jurisdiction and receive two licenses?

25 A No. That's beyond comprehension.

1 Q And you are aware that the application specifically
2 states that an applicant could be awarded only one license per
3 jurisdiction?

4 A That's correct.

5 Q Would you think that creating two LLCs with the same
6 organizational structure and receiving two licenses for a
7 particular location would be a circumvention of that provision
8 in the application?

9 A I would see it as cheating.

10 Q Let's talk about that. There came a time in the
11 course of the application process where your company was going
12 to change. Is that true?

13 A That's correct.

14 Q So the organizational structure was going to change?

15 A It was in the process of changing before the
16 application period came to a conclusion on September 20th.

17 Q Okay. Could you just tell us a little bit about
18 that? There was going to be a transfer of ownership?

19 A Right. There was going to be a transfer of
20 ownership. There was eleven owners of record at that time and
21 seven owners were going forward and the seven owners going
22 forward were buying out four people. And we had executed the
23 purchase agreement to buy them out. We had also given money
24 down, part of the payment for their interest. It wasn't
25 complete but part of it had been paid. And that process was

1 initiated at the end of August and the first part of September
2 and our application was due on the 20th.

3 So the new ownership group was going to include
4 seven people and then we did have one operating manager who's
5 been an operating manager for three years that was also
6 included because she was an operating manager, even though she
7 wasn't an owner. But of the four people we removed, three of
8 them were women and one was a man. But the application was
9 clear that you had to present your proposed owners in the new
10 business or in the business for these applications. It did
11 not use the word current, it used the word proposed. And in
12 doing an evaluation of that, there's just absolutely no way
13 you can say current equals proposed without bastardizing the
14 English language.

15 So we did with our application what was -- would be
16 the ownership group, discarding three women in the
17 application, even though we knew that was going to hurt our
18 diversity score, but they weren't going to be the owners. And
19 then at the time the -- we had the transfer papers going
20 forward, but at the time the licenses were awarded at the
21 first part of December and the State came back with their
22 official document saying this is the new ownership group, that
23 document from the State on December 6th matched up perfectly
24 to the proper decimal point of what we presented would be the
25 ownership, the proposed ownership group of the people that

1 would get the licenses.

2 We did that at our own detriment as far as our
3 diversity scores, but it was an honest reflection of answering
4 the question, Proposed Ownership, of who would have these
5 licenses if they were awarded. And currently with the State
6 what the State has listed as ownership is precisely what we
7 put on our application and we complied with that term. And
8 there was an active discussion about including the women with
9 it, but that would have been a false presentation to the
10 State.

11 Q And even though the transfer had not yet been
12 completed and during the application process those -- that
13 ownership and those women were still part of the company, you
14 knew that that was going to change once the licensing was
15 completed and you wanted to make full disclosure to the State
16 with regard to that change?

17 A Yes. That's exactly correct. Plus, and all the
18 lawyers in this room know this, in any type of contract
19 transaction and analyzing and presenting to the State, it was
20 not a condition precedent sort of application, it was a
21 condition subsequent. And what I mean by that is we had the
22 contract of transfer, we had money exchanged. Getting the
23 final transfer papers with the State was a condition
24 subsequent which would terminate where we were going with our
25 operation. It wasn't an essential component that we had to

1 get in place to go forward.

2 And every business that does a transfer -- I think
3 if we brought all the evidence, I'd like to see an example of
4 where you had one marijuana company that did a transfer of
5 interest where they had the State change their -- do the
6 transfer of the State and then execute the purchase agreement
7 and the payment amounts for it. I don't think you're going to
8 see a condition precedent condition and a transfer of license.
9 I think you're always going to see a condition subsequent
10 because that's how the contracts would work in these cases.

11 Q And do you think that a company with a pending
12 application with a certain organizational structure that is
13 going through a negotiation of a purchase agreement and then
14 actually executes a definitive agreement which would change
15 the organizational structure, yet the transfer of ownership
16 had not yet been completed during the pendency of the
17 application process owes a duty to the Department of Taxation,
18 the State of Nevada to make that disclosure?

19 A Absolutely.

20 Q And if they don't, what is your thoughts about that?

21 A I think they're -- they allow the process to go
22 forward where one group that's evaluated is illusory and then
23 the others are real. So you've got fake versus real and it's
24 a dishonest presentation to the State. But I also think, and
25 I'm going to add this, I think the State had an obligation to

1 have accountability as to certainty as to whether people
2 presented on their application truthful information. And if
3 you fully intend, just for an example, that you are -- you've
4 already executed the paperwork to have a public company own
5 your business but you show it on your application that it's
6 just going to be private ownership, I think that that's just
7 not honest.

8 MR. CRISTALLI: No further questions, Your Honor.

9 THE COURT: Any of the other plaintiffs have
10 questions? (No response).

11 Cross-examination. Mr. Shevorski.

12 MR. SHEVORSKI: Thank you, Your Honor.

13 THE COURT: Come on, Mr. Shevorski, let's get going.

14 MR. SHEVORSKI: I am. I'll do my best, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. SHEVORSKI:

17 Q Good morning, Mr. Thomas. My name is Steven
18 Shevorski. I'm with the Office of the Attorney General.
19 Thank you for being here. And your retained counsel is who in
20 this matter?

21 A Uh, what is it, Gentile, Cristalli, Miller; that law
22 firm over there.

23 Q Okay. As part of that, you retained them as your
24 counsel; correct?

25 A Yes.

1 Q Yes. And did you give them authority to file
2 documents in this case on your behalf?

3 A Yes.

4 Q Did you give authority to them to file a motion for
5 preliminary injunction on your behalf?

6 A Yes.

7 Q And I believe in your response to my friend, Mr.
8 Cristalli, that you mentioned that you worked on campaigns?

9 A Yes.

10 Q I think I've actually gotten some emails from you.

11 THE COURT: I disclosed at the beginning of the
12 hearing he worked on my campaigns, whenever they were.

13 MR. SHEVORSKI: Very good, Your Honor.

14 BY MR. SHEVORSKI:

15 Q And about how long have you done that?

16 A As I said, I think nineteen years.

17 Q Very good. It's fair to say that you're attuned to
18 the political world?

19 A Yes.

20 Q That would be local and state?

21 A Yes.

22 Q Would you please turn to Exhibit 2009. There are
23 black binders. They may be behind you, sir.

24 THE COURT: I think they're on the cart. Carl's got
25 it.

1 BY MR. SHEVORSKI:

2 Q You've just been handed a copy of Exhibit 2009.
3 Please take your time to review it if you haven't seen it.

4 A I've reviewed it.

5 Q Have you seen document 2009 before?

6 A No.

7 Q Did you know, independent of that document, did you
8 know that there was a Governor's Task Force on the
9 implementation of Question 2?

10 A Yes.

11 Q When did you learn about the Governor's Task Force?

12 A It was several years ago. Oh, the current
13 Governor's Task Force?

14 Q No, sir. Governor Sandoval.

15 A Sandoval. Okay, because there's two task forces. I
16 believe that the first Task Force was established about three
17 years ago.

18 Q Prior to May 30th, 2017?

19 A Yes.

20 Q And once you learned of the Governor's Task Force,
21 did you do anything in terms of in your capacity -- and your
22 company is called --excuse me, it's part of the injunction
23 hearing -- Nevada Pure, LLC?

24 A Yes.

25 Q In your capacity as a representative of Nevada Pure,

1 LLC, did you do anything to pay attention to the Governor's
2 Task Force, follow up, go to meetings, those kinds of things?

3 A One of our members, one of our owners, John DiBella,
4 was on the Task Force.

5 Q And what role, if any, did he have?

6 A He would keep us informed of what was happening with
7 the meetings and the discussions they were having.

8 Q And did he do that in writing or was that a group
9 setting?

10 A Just -- we have a weekly operating managers meeting
11 and he's one of the operating managers, so he would give us a
12 report on a weekly basis at that time.

13 Q And that report, would that be in writing or is that
14 oral?

15 A It was always oral.

16 Q Does Nevada Pure, LLC have general counsel?

17 A Yes, it does.

18 Q And who is that?

19 A Woodburn and Wedge.

20 Q Okay. Were they present at those weekly meetings
21 that you just discussed?

22 A No, they were not.

23 Q I know that you're a lawyer. Were you acting in the
24 capacity as a lawyer during those weekly meetings?

25 A No.

1 Q Were there any persons on your -- I think there are
2 multiple members of Nevada Pure who are also attorneys. Were
3 any of those persons acting in their capacity as lawyers
4 during those meetings?

5 A No.

6 Q And what was the gentleman's name who was on the
7 Task Force? I apologize.

8 A John DiBella. DiBella Florist.

9 Q Mr. DiBella, did he -- so he never provided a copy
10 of this report to your ownership group, even though he was a
11 member of the Task Force?

12 A I'm looking at -- Oh, I'm looking at the wrong
13 thing. 2019?

14 Q 2009, sir.

15 A Nine. Sorry.

16 Q No, not at all. It's a preliminary injunction
17 hearing. It's new to everyone.

18 A Oh, yes. Yes, we did get a copy of this report.

19 Q You did get a copy of it?

20 A Yes. Sorry about that.

21 Q Not at all. Could you go to page 2515? And that's
22 using the Bates number, not the actual page number.

23 A I'm there.

24 Q Can you turn to the paragraph styled, "Application
25 Process"?

1 A Yes.

2 Q It says, "The Department of Taxation should rank the
3 applicants based on an applicant's qualifications without
4 respect to the planned location of their business." Did I
5 read that correctly?

6 A Yes.

7 Q And you received a copy of this document?

8 A Yes.

9 Q And if you look at Rating Criteria on Applications,
10 that section there that's right below it, sir.

11 A Yes.

12 Q It says, "The Task Force recommends that the
13 impartial numerically scored process used by the medical
14 marijuana program be revised for retail marijuana stores to
15 remove consideration of location and focus only on an
16 applicant's qualifications for operation of a marijuana
17 establishment." Did I read that correctly?

18 A Yes.

19 Q And again, you received a copy of this report?

20 A Yes.

21 MR. CRISTALLI: Objection. I think that misstates
22 the testimony.

23 THE COURT: Overruled.

24 MR. CRISTALLI: Foundation.

25 //

1 BY MR. SHEVORSKI:

2 Q Out of the members of your group, did you all have
3 equal responsibility in terms of researching information or
4 gathering information from the State prior to your application
5 being submitted or was there one particular person who was
6 doing that?

7 A We had different assignments for different people.
8 We had --Dickerson Wright were our attorneys on that. We had
9 hired an outside group to put it together and then individual
10 owners would have certain responsibilities. One of my
11 responsibilities was to track down properties that were in
12 non-excluded areas that would be potential that we could put
13 on our application.

14 Q Okay. What were the responsibilities of the other
15 persons?

16 MR. SHEVORSKI: I apologize for the question. I'm
17 trying to be quick, Your Honor, but I haven't had a chance to
18 meet Mr. Thomas.

19 THE COURT: It's okay.

20 THE WITNESS: Well, the independent group that we
21 hired, they would put the application together. We had some
22 oversight with our chief executive officer over their conduct
23 and then it was reviewed by the law firm, Dickerson Wright.

24 BY MR. SHEVORSKI:

25 Q And who was the chief executive?

1 A Matt Gardner.

2 Q And who was the consultant that you used?

3 A David White & Associates.

4 Q White?

5 A David White.

6 Q Okay. Thank you, sir.

7 A White & Associates.

8 Q Did David White and Associates -- they're not a law
9 firm, are they?

10 A No.

11 Q And they weren't providing confidential legal advice
12 to you?

13 A No.

14 Q Was one of their responsibilities to monitor the
15 State's website for information that might be pertinent to the
16 application?

17 A Yes.

18 Q Now, were they hired prior to July 31st, 2018?

19 A They were hired right around that time. I couldn't
20 give you the specific date. It may have been the first week
21 in August.

22 Q The first week in August. So prior to hiring -- but
23 you're unsure about that; give or take a week or so?

24 A Yeah. I'm not sure on the date we specifically
25 hired them.

1 Q Is the document that you used to hire David White &
2 Associates, is that a confidential document or is that -- does
3 it contain any confidential material?

4 A I -- yeah, we have a document with the -- well, if
5 we have a document it would -- it is -- there is a
6 confidentiality provision we put in most of our agreements
7 like that, so that probably is there but I haven't reviewed
8 that document.

9 Q Does the -- to the best of your recollection is the
10 document dated in terms of its execution?

11 A I don't know that.

12 Q If I asked you, would you provide a copy of that to
13 your attorney, Mr. Gentile, and he might be able to review
14 that for privilege or confidentiality?

15 A Sure.

16 Q Thank you, sir. Prior to your retention -- Nevada
17 Pure's retention, excuse me, of David White & Associates, who
18 was responsible for -- in the Nevada Pure Group for monitoring
19 the State's website, the Nevada Department of Taxation's
20 website for pertinent information relating to the application?

21 A I think all of the operating managers did some of
22 that work. That would include myself. And Matt Gardner, who
23 is again our chief executive officer, always did that as well.
24 I think it was a shared responsibility.

25 Q How often would you do -- strike that. Let's deal

1 with -- it was a shared responsibility. Let's deal with just
2 yourself, Mr. Thomas. How often did you check the State's
3 website?

4 A I think I checked it in June a couple times to see
5 when the application was going to come out. And I'm not sure,
6 I think other people in our group checked it. It was checked
7 periodically. As far as whether it was checked weekly or
8 monthly, I wouldn't be able to answer that.

9 Q Okay. And the other people, you mentioned it was a
10 shared responsibility, can you give their names as to who --
11 which other people checked the State's website? And we're
12 dealing with -- let's just deal with the time period you
13 discussed in June of 2018.

14 A Well, our five operating managers at that time were
15 Ashley Hollo, James Green, Brandon Rexroad, myself and John
16 DiBella, the five of us. The same five we put on the
17 application.

18 Q So there are five of that were periodically -- let's
19 call it -- I'll use -- is the word periodic a fair word to
20 characterize?

21 A Sure.

22 Q Did you personally, sir, and I'm not asking you to
23 speak for other people's experience, did you see a listserv
24 that you could subscribe to to get information from the State
25 of Nevada Department of Taxation?

1 A None of the five of us were on the Listserv. After
2 I became aware of the application issue last night, I
3 researched it and none of the five operating managers are on
4 the Listserv.

5 Q I appreciate your answer and I thank you for that,
6 but that wasn't my question.

7 A Okay.

8 Q My question was were you aware that there was a
9 Listserv on the website that you could subscribe to?

10 A I was not.

11 Q Do you know if any of the other four individuals who
12 were checking the website periodically were aware of that?

13 A That I don't know the answer to.

14 Q Did you go and check the website last night to see
15 if the Listserv was there?

16 A No. I went to the website and I took -- downloaded
17 a copy of the application itself.

18 Q Okay. Can you please turn to Exhibit 2018, sir.
19 And it's kind of murder to read it on the screen. It might be
20 more helpful to just look at the -- I'm not sure which one
21 would be better for you, whether it's the print copy or the
22 screen copy.

23 A This is fine, the print copy is fine.

24 Q Okay. And talking to -- Mr. Cristalli mentioned
25 Clark County, Las Vegas is where you applied?

1 A Yes.

2 Q And you received a score there of -- I can barely
3 read it, 164.83, is that correct? Actually, that's wrong.
4 166 --

5 A It's -- where are we?

6 Q It's Number 65.

7 A Number 65.

8 Q I'm going to have to get a magnifying glass.

9 A Yes. 164.83.

10 THE COURT: Mr. Shevorski.

11 MR. SHEVORSKI: May I approach?

12 THE COURT: It's usually used for reading building
13 plans people shrunk.

14 MR. SHEVORSKI: That was my one and only case with
15 Mr. Stolworthy.

16 BY MR. SHEVORSKI:

17 Q And if you would turn to Bates label 2692, sir. And
18 I believe you are 61, or Nevada Pure is, excuse me, 61 there.

19 A Yes.

20 Q And your score was 165.83?

21 A That's correct.

22 Q And as I understood your testimony today, you're not
23 challenging Nevada Pure's score in any particular category,
24 are you, to say that if you would have got one point
25 difference here in this category you would have made it up

1 into the top ten to get a license?

2 A Oh, I think we're challenging our score in every
3 category.

4 Q You are?

5 A Yeah, as far as the criterion that was used. You
6 have to understand until the Legislature passed legislation to
7 have transparency in this case, we didn't know any of the
8 criterion. And as we're discovering the criterion, we're
9 seeing some real concerns of the criterion that was used.

10 Q Did you finish your answer?

11 A Yes.

12 Q Thank you. So as I understand your answer, it's not
13 the application of the criteria that you're challenging, but
14 rather the criteria itself?

15 A No. I think we're doing both.

16 Q You're doing both?

17 A For example, the question of impartiality. If
18 you're -- impartiality to me is an unbiased, fair, objective
19 analysis of comparable items. And I think having specific
20 property versus not having specific property are not
21 comparable items. Presenting who is going to be the ownership
22 of a business versus an illusory group of people are going
23 to own it are not comparable items. So I would say I would
24 question impartiality.

25 Q Any other basis to question impartiality other than

1 that example you used with the property address?

2 MR. CRISTALLI: Objection. Misstates the evidence
3 -- the testimony.

4 THE COURT: Overruled. You can explain.

5 THE WITNESS: Yeah. Those are the two areas that
6 come to mind first. There's been other testimony by other
7 people. I'm not going to recite everybody else's testimony.

8 BY MR. SHEVORSKI:

9 Q I just want to know what Nevada Pure's position is
10 on how the criteria was applied to it. You mentioned you have
11 -- and I know you're a lawyer, so you have kind of a facial
12 challenge that you thought the criteria themselves were
13 inappropriate, but you also then mentioned you had -- you
14 thought the criteria that was used was applied inappropriately
15 to Nevada Pure.

16 A Right

17 Q And so I'm not interested in what -- maybe the judge
18 says maybe I'm wrong, but I'm not interested in what other
19 witnesses may have said who don't have any relationship to
20 Nevada Pure. I just want to know what you believe was done
21 inappropriate in terms of applying the criteria to Nevada
22 Pure's application.

23 A Well, the two that I mentioned as far as property
24 ownership and giving the proper presentation on who your
25 ownership group is. And there has been testimony presented

1 here -- well, you know, those are two that specifically apply
2 to Nevada Pure. As more information comes out, my answer may
3 evolve, but those two I feel comfortable talking about today.

4 Q Have you read the Nevada Revised Statute, 453D?

5 A 453 --

6 Q D, as in dog

7 A D. I've read periodically 453. You'd have to
8 refresh my memory on D. I don't know whether I've read D.

9 Q 453D is --

10 A Oh, the whole regulation is D.

11 Q No, not the regulations, the statute.

12 A The statue. Periodically I have.

13 Q Are you aware of any provision in Nevada Revised
14 Statute 453D that requires the property address to be scored?

15 A I do not.

16 MR. SHEVORSKI: No further questions. Thank you
17 very much.

18 THE COURT: Mr. Koch.

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

20 THE COURT: You may. It's scary that I had that
21 right there for you, huh?

22 MR. SHEVORSKI: I appreciate it, Your Honor.

23 CROSS-EXAMINATION

24 BY MR. KOCH:

25 Q Mr. Thomas, I think you testified that when you

1 applied in 2014 as Nevada Pure, it didn't originally rank high
2 enough to receive a medical marijuana license, is that right?

3 A That's correct.

4 Q And through some further events it was able to
5 eventually obtain a license, is that right?

6 A That's correct.

7 Q Where did Nevada Pure's score, the initial score
8 rank among the applicants at that time?

9 A Well, at that time it was MedMen of Nevada. We
10 evolved out and we did a separation agreement in 2014. I
11 don't recall all of our scores from that application process.

12 Q Okay. It was not high enough to initially obtain a
13 license then?

14 A It was high enough to obtain the cultivation and
15 production but not the dispensary.

16 Q My understanding is Nevada Pure about a year ago
17 entered into an agreement with GB Sciences, potentially for
18 GB Sciences to acquire the company, is that right?

19 A No. We entered into a letter of intent subject to
20 due diligence. That's different than a purchase agreement.
21 The purchase agreement would only come into existence if there
22 was a satisfaction to both sides with regards to the letter of
23 intent on due diligence period.

24 Q All right. Good distinction. So a letter of intent
25 was signed for GB Sciences to acquire NV Pure or Nevada Pure,

1 is that right?

2 A Potentially acquire us, yes.

3 Q And GB Sciences did its due diligence?

4 A GB Sciences did do its due diligence, yes.

5 Q And after doing that due diligence, it declined to
6 move forward with the transaction?

7 A We both -- both parties mutually agreed to separate.

8 Q Was there a particular reason?

9 A I think -- yeah, we weren't satisfied with the
10 number that -- the final terms they wanted to have in the
11 purchase agreement and they weren't satisfied with some of the
12 terms we wanted.

13 Q All right. Are you familiar with the scores that
14 Nevada Pure received on the identified portion of the
15 application in this case?

16 A Yes.

17 Q And if we turn to Exhibit 5007, do you have that in
18 front of you, Mr. Thomas?

19 A Oh, 5000 --

20 Q We'll put it up on the screen. If you have any
21 questions we can get the actual documents. 5007, we're going
22 to turn to RD478 through 479. It might take just a minute to
23 get there. All right, we're there. So, Mr. Thomas, my
24 understanding is that RD478 and 479 is the numerical I.D. that
25 Nevada Pure had, is that accurate?

1 A Yes.

2 Q And on the scoring sheet, the first category there,
3 Nevada Pure on the organizational chart received 3 out of 15
4 points, is that right?

5 A Yes.

6 Q Did the proposed building location issue that you've
7 been talking about here have anything to do with the
8 organizational chart?

9 A It did to some degree because it was included in the
10 non-identifier, but this was part of the identified portion so
11 this part of it was separate from that.

12 Q Right. And in truth, the organizational chart had
13 nothing to do with whether or not Nevada Pure had a proposed
14 business location?

15 A No.

16 Q Also, the diversity category, element 5. If we look
17 at that, you scored 4 out of 20. You talked a little bit
18 about the proposed owner issue that was there and that you
19 made changes based upon your understanding of that. Other
20 than your decision, apparently, to part ways with three female
21 board members and one male board member, was there anything
22 else that you believe affected your diversity score
23 negatively?

24 A Because we made that decision, we knew it was going
25 to affect our diversity score. We didn't know how the grading

1 was going to be done but I anticipated that we would be graded
2 down on diversity because of that.

3 Q If you had known how the grading would have been
4 done, would you have kept those female individuals on the
5 board?

6 A No.

7 Q So even if you understood exactly how the grading
8 was going to be done by the evaluators, you would not have
9 made a different decision?

10 A Well, I think we would have made a decision and
11 maybe with other dispensary owners to challenge the criterion
12 before the process even started. We didn't know what it was.
13 Based on how the diversity structured, just in private
14 discussions I said that would have been an area I would
15 absolutely challenge the whole criterion because the way that
16 it's set up, you have two owners, one is a woman, one is a
17 man, the woman owns 1 percent and the man owns 99 percent, you
18 get, you know, a 50 percent score because of the two owners,
19 one is a woman, one is a man. It should be based on
20 percentage of ownership in the business. So I would have
21 challenged the whole use of that criterion if we had known it
22 in advance.

23 Q All right. So you think the Department should have
24 applied different criteria than the criteria it applied?

25 A In this particular case, yes.

1 Q Let's go down toward the bottom of the page under
2 Taxes, element 1. Taxes paid to the State of Nevada. Nevada
3 Pure scored 1 out of 10 in that category; correct?

4 A Yes, that's correct.

5 Q Did the proposed building location have anything to
6 do with Nevada Pure's score on this category?

7 A No.

8 Q The next item, element 2, Monetary contributions to
9 Nevada political subdivisions. Again, Nevada Pure scored 1
10 out of 10 on this category. Would the proposed building
11 location have anything to do with this category score?

12 A No, it would not.

13 Q And if we look at Nevada Pure's actual score on the
14 non-identified, we'll go to Exhibit 5008 again, RD478. All
15 right. This is the tally sheet for Nevada Pure, the first
16 tally sheet; correct?

17 A Yes.

18 Q Here we have Building Construction, item 1. Nevada
19 Pure received 9, 8, 8 for an average score of 8.33 on the
20 building plan details. Do you believe that Nevada Pure was
21 penalized for having a specific location for which it prepared
22 plans?

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

24 Q Okay. That's a pretty good score, wouldn't you
25 agree?

1 A It's a decent score, yeah.

2 Q And if we go down, another element that relates to
3 building, item 3 under care, quality, safekeeping, which is
4 building security, and on building security Nevada Pure scored
5 an 8 across the board for that item. Do you feel like Nevada
6 Pure was penalized for its building security plan?

7 A Yeah, I have no idea.

8 Q Okay. Let's go -- the last one to look at. Item 8,
9 Minimize environmental impacts. And on environmental impacts
10 Nevada Pure got a 1, a .5 and a zero out of 2.5. Did Nevada
11 Pure submitting a specific building location have anything to
12 do with those scores?

13 A I have no idea on that one as well.

14 Q You don't know if Nevada Pure was penalized in any
15 way for its environmental plan --

16 A No.

17 Q -- environmental impact plan based upon specific
18 locations?

19 A I do not know.

20 Q And Nevada Pure scored sixty-first in unincorporated
21 Clark County and sixty-fifth in Las Vegas, is that right?

22 A That's correct.

23 Q If Nevada Pure had simply submitted a generic plan,
24 do you believe Nevada Pure would have moved into the top ten
25 in any of those categories?

1 A I have no idea on that.

2 MR. KOCH: No further questions.

3 THE COURT: Any other defendants in intervention
4 wish to inquire?

5 Mr. Hymanson.

6 MR. HYMANSON: Thank you.

7 CROSS-EXAMINATION

8 BY MR. HYMANSON:

9 Q Good morning, Mr. Thomas.

10 A Good morning.

11 Q How involved were you in the application process for
12 2018?

13 A I was -- I was fairly involved.

14 Q How many people in your company were involved in the
15 process of putting together the application?

16 A I would say six people had some involvement with the
17 application.

18 Q And can you give me an approximation of how many
19 days or weeks or months or what type of hours were put in to
20 go after that application?

21 A Oh, that would be a lot of speculation. I can say
22 many hours were put in. I know from my going out and trying
23 to track down property that was hundreds of hours.

24 Q Was it a lot different from the 2014 application?

25 A No, I think they were comparable as far as number of

1 hours.

2 Q And in hindsight, having not qualified for a
3 license, is there anything that your company would have done
4 differently so as to score better?

5 A In what I know now we would have maybe -- not
6 knowing the criterion in advance, you would say, oh, they
7 emphasized certain other criterion than what we thought was
8 rational. I don't know if we would have necessarily changed
9 it as much as we would have challenged it at the beginning.

10 Q You had mentioned you were concerned -- you were
11 more than concerned, you said that anyone that had two LLCs
12 applying for the same jurisdiction in your opinion was
13 cheating. Is there any provision in the statute that would
14 prevent that from being done?

15 A I think the language -- and you'd have to bring it
16 up and review it. At least my understanding of the language
17 is everybody had an opportunity to apply for -- every
18 ownership group for one license. And if you have five -- you
19 know, if you take it to the extreme here, if you have five
20 people and they take Title A and you take those same five
21 people and they form a company, Title B, it's the same
22 ownership, they've just put a different label on it. And I
23 guess if they wanted to, if you take it to its logical
24 conclusion, those same five people could have formed fifty
25 companies and then they could all apply and they could have

1 monopolized every single license if they scored at the top.

2 Q Mr. Thomas, my question is -- and I'll broaden it to
3 the regulations as well, was there anything in the Nevada
4 statutes or in the regulations that prevented a company from
5 using two different LLCs to apply for two separate licenses in
6 the same jurisdiction?

7 A That's a legal analysis that I can't provide to you
8 right now.

9 Q Fair. Are you aware that some of the companies that
10 are on this side of the aisle did that as well as -- more than
11 one company did that? Are you aware of that?

12 A I'm not aware of how many -- I'm not aware of it.

13 Q All right, fair enough. But if it's not precluded
14 by the rules or the regulations or the statutory provisions,
15 in your opinion it's still cheating?

16 A I think it is.

17 Q Okay. Are you saying that there's -- you're not
18 claiming any favoritism by the Department of Taxation in their
19 analysis, are you?

20 A I don't -- in all honesty, I don't have enough
21 information yet to make that determination.

22 Q You're not claiming that there was any corruption
23 involved, are you?

24 A No.

25 Q Okay. And you say that you can't make that

1 determination yet as to favoritism. Is there a reason why you
2 waited as long as you did to raise these issues?

3 A There wasn't transparency. Ever since the
4 Legislature passed the bill that required transparency is the
5 first time I got any exposure to the criterion.

6 Q What type of harm will your company suffer if an
7 injunction is not granted?

8 A Well, we won't get another license to go forward
9 with our business.

10 Q Well, currently you don't have another license to go
11 forward with. That won't impact --

12 A Well, the biggest thing is we won't get a fair
13 review of the process. The truth is -- and I think that's
14 something we have an entitlement to is that we have a fair
15 review if the process was done in a legal, ethical and proper
16 manner.

17 Q And you're saying that based on what you've seen you
18 don't find any favoritism or corruption or problems from the
19 Department of Taxation, is that what you're saying?

20 MR. CRISTALLI: Objection. Compound.

21 THE COURT: Overruled. You can answer.

22 THE WITNESS: I said I have no evidence of
23 corruption. The others, I don't know. I've already indicated
24 that I saw analysis that I determined that impartiality did
25 not occur.

1 MR. HYMANSON: Thank you, Mr. Thomas.

2 THE COURT: Any redirect?

3 MR. CRISTALLI: Yes, Your Honor.

4 REDIRECT EXAMINATION

5 BY MR. CRISTALLI:

6 Q Mr. Thomas, counsel asked you about harm as a result
7 of not getting licenses. Licenses have value. Would that be
8 accurate?

9 A Yes.

10 Q In fact, we've heard some testimony about valuations
11 in the amount of \$10 million per license.

12 A That's correct.

13 Q That's a considerable amount of money?

14 A Yes.

15 Q Additionally, on direct examination you testified
16 that you lost property locations?

17 A Yes.

18 Q And you secured those property locations with money?

19 A Yes.

20 Q And you didn't get that money back?

21 A Yes.

22 Q And you lost those properties?

23 A Yes.

24 Q And properties are unique?

25 A Yes.

1 Q You're familiar with the regulations, as we
2 discussed?

3 A Yes.

4 Q Isn't it true, Mr. Thomas, that the regulations
5 specifically discuss language that prevents monopolies in the
6 retail marijuana business?

7 A That's correct.

8 Q And the application specifically says that an
9 applicant should not be awarded one -- more than one license
10 per jurisdiction?

11 A Yes.

12 Q And the intent behind that language was to prevent
13 monopolies, prevent companies from gaining unfair advantage in
14 the marketplace?

15 MR. HYMANSON: Objection. Speculation.

16 THE COURT: Overruled.

17 THE WITNESS: That's my understanding.

18 MR. CRISTALLI: Can we pull up 5007 again? If
19 somebody could, anyway? I know it's over there, not over
20 there.

21 THE COURT: And you say thank you when that happens,
22 right?

23 MR. CRISTALLI: Thank you. Your Honor, may I
24 approach? Because I can't see it and I don't have it in front
25 of me.

1 THE COURT: Okay.

2 MR. CRISTALLI: I won't ask a question over there,
3 though.

4 MR. KOCH: Do you want Nevada Pure's score?

5 MR. CRISTALLI: Yes, please. I'm sorry. That is
6 478 and 479. It's RD478 and 479.

7 (Pause in the proceedings)

8 BY MR. CRISTALLI:

9 Q Mr. Thomas, counsel asked you about specific
10 portions of the tally sheet as it relates to your application.
11 Specifically as it relates to political contributions,
12 political contributions are not directly and demonstrably
13 related to marijuana retail establishments, are they?

14 A I would hope not.

15 Q Taxes paid by other companies unrelated to a retail
16 marijuana establishment, that is not directly and demonstrably
17 related to the operation of a retail marijuana establishment,
18 is it?

19 A Not in my mind.

20 Q What about education unrelated to the operation of a
21 retail marijuana establishment?

22 MR. SHELL: Your Honor, I have to object. This goes
23 beyond the scope --

24 THE COURT: Can you -- Overruled.

25 MS. SHELL: -- of the cross-examination.

1 THE COURT: Overruled.

2 THE WITNESS: Could you repeat the question?

3 BY MR. CRISTALLI:

4 Q What about education unrelated to the operation of a
5 retail marijuana establishment?

6 A I don't think so, either.

7 Q And what about diversity as it relates to --

8 A I don't --

9 Q -- directly and demonstrably relating to the
10 operation of a retail marijuana establishment?

11 A I don't think it's direct and demonstrative to a
12 retail marijuana operation.

13 Q Counsel suggested that there is nothing in NRS
14 453D.210 with regard to location.

15 MR. CRISTALLI: Shane, could you pull up 453D.210 5,
16 subsection (b), I believe.

17 BY MR. CRISTALLI:

18 Q And 453D.210 5(b) specifically states, "The physical
19 address where the proposed marijuana establishment will
20 operate is owned by the applicant or the applicant has the
21 written permission of the property owner to operate the
22 proposed marijuana establishment on the property." Is that
23 what it says?

24 A Yes, it does.

25 Q Also, in NAC 453D.268, as we've previously pointed

1 out, further requires, "The physical address for the proposed
2 marijuana establishment will be located and the physical
3 address of any co-owned or otherwise affiliated marijuana
4 establishments." Are you familiar with that language as well?

5 A I am, and that's the language that I was familiar
6 with at the time of our application.

7 Q And in fact Attachment A of the application that you
8 submitted to the Department of Taxation for the purposes of
9 the 2018 retail marijuana licenses, your particular
10 application specifically requires a location. Is that not
11 correct?

12 A That's correct.

13 Q Counsel asked you a little bit about the Task Force.
14 Is there anywhere in the application that requires you to
15 participate in the Task Force in order to get information to
16 apply for a retail marijuana establishment license in the 2018
17 application process?

18 A No. And the Task Force is just recommendations,
19 they're not law.

20 Q You didn't receive points for being on the Task
21 Force, did you?

22 A No.

23 MR. CRISTALLI: No further questions.

24 THE COURT: Any additional questions from anyone?

25 Mr. Shevorski.

1 MR. SHEVORSKI: Thank you, Your Honor. May I have
2 your statute book, Your Honor?

3 THE COURT: You want my statute book?

4 MR. SHEVORSKI: Yes. May I approach?

5 THE COURT: You may.

6 RE CROSS EXAMINATION

7 BY MR. SHEVORSKI:

8 Q And you've just been handed a copy of the Nevada
9 Revised Statutes. As a lawyer, I'm assuming you're familiar
10 with that?

11 A Yes.

12 Q Okay. And before you appeared for your testimony
13 today, you've read NRS 453D.210 in its entirety?

14 A Before my testimony today, no, I didn't read it.

15 Q You didn't read it?

16 A No.

17 Q Okay. So you weren't relying on -- you didn't read
18 it, so you weren't relying on 453D.210 to fill out your
19 application if you didn't read it?

20 A No, no. We read it before we filled out our
21 application. I thought the question was whether I read it
22 before my testimony today.

23 Q Well, that's what -- before your application was --

24 A Yes. Yes.

25 Q -- before your testimony?

1 A Yeah.

2 THE COURT: As opposed to in preparation for his
3 testimony today.

4 MR. SHEVORSKI: Fair enough, Your Honor.

5 THE COURT: Okay.

6 MR. SHEVORSKI: Fair enough. That's a good
7 clarification.

8 BY MR. SHEVORSKI:

9 Q Can you turn to subpart 6, please.

10 A I'm there.

11 Q "When competing applications are submitted for a
12 proposed retail marijuana store within a single county, the
13 Department shall use an impartial and numerically scored
14 competitive bidding process to determine which application or
15 applications among those competing will be approved." Did I
16 read that correctly?

17 A Yes.

18 Q Is there any definition within the entirety of that
19 Chapter 453D that defines numerically scored?

20 A No.

21 Q Is there any definition in the entirety of 453D that
22 defines competitive bidding process?

23 A No.

24 Q Is there any definition in the entirety of 453D that
25 defines impartial?

1 A No.

2 Q Now, we've talked a little bit about the Governor's
3 Task Force and you described them as recommendations?

4 A Yes.

5 Q And you described that a member of your team, Nevada
6 Pure, was familiar with the Governor's Task Force --

7 A Yes.

8 Q -- or getting periodic updates? And you're aware at
9 least as of right now that the Governor's Task Force did not
10 recommend that the physical address be scored?

11 A Yes.

12 Q Can you turn real quick to Exhibit 2009 again.

13 A I'm there.

14 Q Okay. And just the title page, please. Governor's
15 Task Force on the Implementation of Question 2. The
16 Regulation and Taxation of Marijuana Act.

17 A Yes.

18 Q Do you believe that the members of the Governor's
19 Task Force were acting in bad faith or in any way abusing
20 their privilege of interpreting the statute when it came up
21 with the decision to remove location from the scoring
22 criterion?

23 A I could not get in the heads of each member. I have
24 no knowledge of bad faith, though.

25 Q Okay. Do you have any knowledge of whether or not

1 they were purposely misinterpreting Chapter 453D when they
2 wrote the Governor's Task Force?

3 A I have no information on that, no.

4 Q It's entirely possible that they are in good faith
5 interpreting Chapter 453D, just like you when you said that an
6 address should be included in the competitive bidding process?

7 A Sure.

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

9 THE COURT: Anybody on this side?

10 UNIDENTIFIED SPEAKER: No, thank you, Your Honor.

11 THE COURT: All right. Thank you, Mr. Thomas.

12 THE WITNESS: Thank you.

13 THE COURT: Next? It's 11:57. Should we break for
14 lunch?

15 MR. GENTILE: It would seem appropriate.

16 THE COURT: I have a twelve o'clock conference call
17 that's short. I have a one o'clock conference call that's
18 short, so if you guys can be back here at five after 1:00,
19 that would be lovely.

20 MR. SHEVORSKI: Yes, Your Honor.

21 (Court recessed at 11:57 a.m. until 1:09 p.m.)

22 THE COURT: Mr. Gilbert, you're up. We have to re-
23 swear you, since it's a new day and afternoon. And I
24 apologize, sir, for making you wait all day. If I'd known
25 they were going to do this, I wouldn't have asked you to come

1 till 1:00.

2 STEVE GILBERT, PLAINTIFFS' WITNESS, SWORN

3 THE CLERK: State and spell your name for the
4 record.

5 THE WITNESS: My name is Steve Gilbert, S-T-E-V-E
6 G-I-L-B-E-R-T.

7 THE COURT: Thank you, sir.

8 Okay. Mr. Gentile, you're up.

9 MR. GENTILE: Yes.

10 DIRECT EXAMINATION (Continued)

11 BY MR. GENTILE:

12 Q Mr. Gilbert, yesterday -- at least as far as we
13 proceeded yesterday I was focusing on the language in my
14 questioning of you of -- hold on a minute -- 453D.200, the
15 statute. You may not have -- I don't know that we identified
16 it as such, but at that point when I -- what I was focusing on
17 was the qualifications for licensure that are directly and
18 demonstrably related to the operation of a marijuana
19 establishment. And that comes right out of that statute;
20 right?

21 A Yes.

22 Q Okay. Today we're going to focus on that still, but
23 some other aspects of the statute, particularly 453D.210(6),
24 which reads, "When competing applications are submitted for a
25 proposed retail marijuana store within a single county the

1 Department shall use an impartial and numerically scored
2 competitive bidding process to determine which application or
3 applications among those competing will be approved." And I
4 know you're familiar with that language, as well; right?

5 A Yes.

6 Q You have to say a word.

7 A I did. Yes.

8 Q Okay. I thought you said uh-huh.

9 Anyhow, now, this morning Mr. Shevorski asked a
10 witness, I think it was Dr. Amei, if she saw the word "bias"
11 anywhere in the statute or the regs. And she said no, she did
12 not. And, of course, that's accurate; right?

13 A To my understanding, yes, it is.

14 Q I mean, I've been reading it, and I don't see the
15 word "bias" at all. And then he asked Mr. Thomas this morning
16 if he saw any definition of the word "impartial" in the
17 statute. I think you were sitting back there. You may have
18 heard it, it may have registered or not. But I promise you
19 that was the question and answer, okay.

20 A Yes.

21 Q Because it doesn't contain a definition of
22 "impartial."

23 Have you ever seen the Oxford Dictionary of the
24 English Language?

25 A Yes, I have.

1 Q Are you aware that it is the most widely used
2 dictionary of the English language in the world?

3 A Yes.

4 Q In the old days it used to have a shelf full of
5 books. I had them when it was hard copy, all right. It
6 probably covered 2 feet of a bookshelf. I'm going to read to
7 you, and you could take me at my word or not, but the Oxford
8 Dictionary's definition of "unbiased" is "showing no prejudice
9 for or against something; impartial." Will you accept that as
10 the definition of "unbaised"? Because we're going to be
11 talking about bias a little bit.

12 A If that's the definition in the dictionary, yes, I
13 will.

14 Q Well, let's say it wasn't the definition in the
15 Oxford Dictionary. Would you accept that "unbiased" means
16 showing no prejudice for or against something or impartial?

17 A Yes, I would.

18 Q Okay. Thank you.

19 So by implication when something is impartial it
20 sort of deals with bias. Fair to say?

21 A Yes.

22 Q Now, with regard to this situation that would call
23 into operation paragraph (6) of 453D.210, and I just read
24 that, that's the one that says -- well, it's up on the screen.
25 You would agree, would you not, that in Clark County there

1 were more applications than there were allocated licenses?

2 A Yes.

3 Q All right. You would agree that in every
4 municipality and subdivision of Clark County, Las Vegas,
5 Henderson, there were more applications than there were
6 available licenses to be awarded?

7 A Yes.

8 Q So in reality everybody down here was in competition
9 if they were an applicant?

10 A Yes.

11 Q Okay. In fact, statewide there were 462
12 applications for what were 61 licenses that were awarded.
13 You're aware of that?

14 A Yes, I am. That's correct.

15 Q All right. To your knowledge was there a single
16 jurisdiction in Nevada that had only one application?

17 A I'd have to go back and look. But right now I don't
18 recall.

19 Q Nothing comes to mind?

20 A No.

21 Q How about Pershing County?

22 A Possibly some of those rural counties could have
23 only had one applicant.

24 Q Yeah. We'll get to Pershing County soon. Well,
25 let's get to it now. Did you ever tell Mr. Plaskon that

1 somebody ought to apply for a license in Pershing County and
2 only open up for Burning Man?

3 A I don't recall telling Ky that. Mr. Plaskon.

4 Q Did you ever tell anybody that they ought to apply
5 for a license somewhere? When I say a license somewhere let's
6 talk about specifically a license that fell within the
7 jurisdiction of the agency that you work for.

8 A Can you clarify the question and repeat it, please.

9 Q Okay. You work for the Department of Taxation.

10 A Yes.

11 Q While you've been working for the Department of
12 Taxation for almost two years did you ever go to someone and
13 say to them, you know, you should apply for a license?

14 A No, I have not.

15 Q Because if you had done that, someone might accuse
16 you -- I'm not saying that's the reason you didn't do it, but
17 you could see that if you did do something like that someone
18 might accuse you of showing favoritism; right?

19 A Yes.

20 Q I mean, it's easy to accuse somebody; right?

21 A Yes.

22 Q And so you're careful not to have that happen.

23 A Yes.

24 Q What other parts of our law, statutory law -- well,
25 maybe it's a statute, they list it as a statute. But are you

1 familiar with Article 19 of the Constitution of the State of
2 Nevada?

3 A I am not.

4 Q Okay. Well, Article 19 is the article that deals
5 with initiative petitions. Is that your understanding?

6 A It is now, yes.

7 Q It is now? Okay. And it's got a lot of terms in
8 it, and I'm certainly not going to read it all. But if you'd
9 go to paragraph (3), part of it says that, "If a majority of
10 voters --" no, I misquoted it, "If a majority of the voters
11 voting on such question," in other words, a ballot question,
12 "at such election votes approval of such statute or amendment
13 to a statute, it shall become law and take effect upon
14 completion of the canvass of the votes by the Supreme Court."
15 Is that your understanding of what happens?

16 A Yes.

17 Q Okay. The next sentence says, "An initiative
18 measure so approved by the voters shall not be amended,
19 annulled, repealed, set aside, or suspended by the legislature
20 within three years from the date it takes effect." Were you
21 aware of that language and its impact on Question 2?

22 A No, I was not.

23 Q Did you just become aware of it now --

24 A Yes.

25 Q -- with me reading it to you?

1 A Yes.

2 Q Yes. Okay. So if you were not aware of it until
3 now, you could not have taken that into consideration with
4 regard to anything that you brought to the effort on the part
5 of the Department of Taxation to create regulations with
6 regard to the administration of 453D; is that fair to say?

7 A I wasn't part of spearheading the regulations for
8 the Department of Taxation. I was just there as -- to offer
9 my experience from the medical 453A.

10 Q Okay. Well, to your knowledge if we're going to not
11 waste this Court's time and we want to put somebody sitting
12 right where you are who in fact worked for the Department of
13 Taxation and did shepherd and have input into the creation of
14 the regulations and you were where I am, you're standing here
15 as a lawyer, who would you have in the seat you're occupying?

16 A I would have Mr. Pupo and Director Contine, who was
17 the director of Department of Taxation at the time the
18 regulations were written.

19 Q Thank you, sir.

20 Now, yesterday we dealt with what I called wealth,
21 but what your -- not your application, but what the
22 application for a retail marijuana establishment refers to as
23 the financial section. Remember asking questions about that?

24 A Yes.

25 Q Okay. And I asked you yesterday in the context of

1 it being directly and demonstrably related to the operation of
2 a marijuana establishment how wealth above what's necessary to
3 operate for a year could be demonstrably -- directly and
4 demonstrably related to the operation of a marijuana
5 establishment. Remember me asking you that yesterday?

6 A Yes, I do.

7 Q And you made an answer yesterday.

8 A Uh-huh.

9 Q Now I want you to talk -- now I want to look at the
10 other statute that we talked about this morning, which deals
11 with the competitive situation, when you're going to compete,
12 when there's more than -- there are more applicants than there
13 are licenses, and so they have to kind of compete; right?

14 A Yes.

15 Q Okay. You were here today when Dr. Amei testified
16 and you heard her talk about the way she perceived the process
17 that was used.

18 A Yes.

19 Q You heard that. But I want to get back to this
20 "unbiased" meaning impartial and section (6) -- paragraph (6)
21 of 453.210, which, again, says, "When competing applications
22 are submitted for a proposed retail marijuana store within a
23 single county the Department shall use an impartial and
24 numerically scored competitive bidding process."

25 And I want to focus again on this concept of wealth,

1 but not -- this time not with regard to how it qualifies
2 somebody and how it qualifies somebody wealthier than the next
3 guy to be more qualified to operate a marijuana establishment,
4 okay. That's what we're going to focus on. That's where I'm
5 going.

6 A Okay.

7 Q So you can forget about the more qualified part, all
8 right. Would you agree, sir, that the application and the way
9 that you -- and I'm not saying you as an individual, the way
10 that the Department of Taxation evaluators and those
11 supervising them administered it was biased in favor of
12 wealth?

13 A I would say it wasn't biased for wealth.

14 Q You say it wasn't biased for wealth.

15 A Right.

16 Q Would you agree -- would you agree -- this is the
17 part where I fumble through pages. If I may have a moment.

18 There were 10 total points that were assigned to
19 financial statements in the financial component. Do you
20 recall that?

21 A Yes, I think that's correct.

22 Q Part of those points were awarded if you had
23 \$250,000; right?

24 A Correct.

25 Q Liquid. Part of them were assigned if you had a

1 year's operating expenses. You remember that? But there were
2 also points that were awarded based on -- there we are. Thank
3 you. Telepathy.

4 You see that bottom half of the center section that
5 says "Evaluation Elements"?

6 A Yes.

7 Q See that?

8 A Yes.

9 Q Okay. You see where if you had up to a half million
10 dollars you were allowed 1 point?

11 A Yes.

12 Q And you'd agree, wouldn't you, that if you had a
13 half million dollars liquid, the \$250,000 requirement you'd
14 complied with, but your operating expenses for the first year
15 might have exceeded that remaining 249,999 -- we can agree to
16 that; right? So, in other words, a half million dollars might
17 not be enough to meet the first two criteria.

18 A The first two criteria --

19 Q First two criteria being that you had to have
20 \$250,00 liquid and enough to operate for a year.

21 A I'd have to look at the application that was being
22 evaluated. And I didn't evaluate the applications, so I don't
23 know if I can apply that scenario

24 Q Did you supervise the evaluation of the
25 applications?

1 A I supervised the process.

2 Q The process.

3 A Yeah.

4 Q But not the evaluations themselves?

5 A No.

6 Q So you didn't take a look at or interface with the

7 evaluators and review their work. Is that what you're saying?

8 A I did not.

9 Q You did not.

10 A No.

11 Q Okay. All right. But now the next category you get

12 2 points if you've got over a half million and up to nine

13 ninety-nine. You see that?

14 A Yes.

15 Q Okay. Now, that might be enough to cover the two

16 fifty and a year's operating expenses; right?

17 A Yeah. Yes.

18 Q Then the next category, if you're a millionaire and

19 you have just a dollar short of \$3 million, you get 4 points;

20 right?

21 A Yes.

22 Q Now, let's make an assumption here just for purposes

23 of a hypothetical. If somebody had a million dollars, well,

24 they'd certainly have 250,000; right? They'd have 750,000

25 more than 250,000.

1 MR. KOCH: Object. Mr. Gentile is looking at taxes
2 paid, nothing to do with money in the bank.

3 MR. GENTILE: Oh. Then he put the wrong one up
4 there.

5 THE COURT: We're on the wrong one.

6 MR. GENTILE: You put the wrong one up there.

7 THE COURT: So everybody said how great you were,
8 and now we've got to go back.

9 Some we could actually read what was on the screen,
10 Mr. Koch. We were impressed. I hadn't put my glasses on yet
11 to look at it.

12 (Pause in the proceedings)

13 MR. GENTILE: Is Exhibit 11 in evidence?

14 THE COURT: Yes.

15 BY MR. GENTILE:

16 Q All right. Let's start over and drop this --

17 MR. GENTILE: Can you drop this? Okay.

18 BY MR. GENTILE:

19 Q Can you read that where you are?

20 A Yes, I can.

21 Q Okay. Good. Now let's see if I can.

22 THE COURT: It's been a long week, Mr. Gentile. We
23 appreciate the humor.

24 MR. GENTILE: It has. It has.

25 //

1 BY MR. GENTILE:

2 Q Well, okay. I can't read it. So how about this?
3 How about you tell me what it says in the column "Evaluation
4 Elements." What's the first part say?

5 A "Financial statements showing the resources of the
6 applicant or applicants, both liquid and illiquid."

7 Q Okay. And then what's the -- let's read the next --
8 yeah, all of that part there, all the way up to there.

9 THE COURT: Mr. Gentile, do you want to borrow mine?

10 MR. GENTILE: I'm embarrassed. I don't know what I
11 did with mine. I had it.

12 BY MR. GENTILE:

13 Q Anyhow, what does it say?

14 THE COURT: So I don't think we really want 11. I
15 think you want 12.

16 MR. GENTILE: No. Actually, 11 is the one that I
17 want him to use.

18 THE COURT: 11 in my book is taxes, 12 is
19 financials.

20 MR. GENTILE: Okay. So we want the one that's on
21 the screen, and you're telling us that it's 12 and not 11?

22 THE COURT: I don't know.

23 MR. GENTILE: It's 12? Of course it's 12.

24 THE COURT: Would you like to borrow mine, Mr.
25 Gentile?

1 MR. GENTILE: No, Your Honor, I don't. I want the
2 witness to read the components of this category that were
3 determined -- that were used to determine the evaluation
4 elements as it related to a financial plan and resources.

5 THE WITNESS: It reads, "Documentation to be
6 considered include in-state and out-of-state documentation
7 from state or federal banks...."

8 BY MR. GENTILE:

9 Q Okay. Let's stop there. Okay. Never mind. Keep
10 going.

11 A "...savings bank, savings and loans associations,
12 holding companies...."

13 Q All right. Stop there. Those first three
14 categories, that's ready cash; right? That's liquid funds;
15 right? I mean, unless you've got a safety deposit box with
16 gold bullion in it or Krugerrands.

17 THE COURT: Or jewelry.

18 BY MR. GENTILE:

19 Q Yeah. Well, we're getting to that.

20 All right. So those first three categories, that's
21 liquid money, [unintelligible] dollars; right?

22 A I wouldn't be the expert to say yes or no, but I
23 would think that savings banks would be liquid.

24 Q Well, Willie Sutton says that's where the money was,
25 in banks, didn't he? That's why he robbed them.

1 So, okay, maybe you don't know that they keep money
2 in banks. Holding companies. What's the next one?

3 A Real estate holdings.

4 Q All right. What's the next one?

5 A Large assets, including cars, boats, et cetera.

6 Q Okay. What's next?

7 A Liquid assets, including stocks, bonds, personal
8 belongings, including jewelry, furniture, et cetera. And then
9 balance sheets and liabilities.

10 Q Okay. Now, I asked you -- and we're going to keep
11 going on this, but I asked you if this application and the way
12 it was evaluated was biased in favor of wealth at least in
13 terms of that component part. And your statement was that it
14 was not. Am I right?

15 A Yes, that's correct.

16 Q All right. In fact you think it was nonbiased?

17 A I feel the way the scoring criteria and the
18 weighting of the application gave an unbiased and fair and
19 impartial process.

20 Q Okay. Let's look at the next one. If all of those
21 things above added up to \$250,000, you were given 1 point, the
22 applicant was given 1 point; right?

23 A Yes.

24 Q If they added up to a half a million dollars, they
25 were given 3 points; right?

1 A Yes.

2 Q If it was over a half a million but up to a million
3 and a half, it was 5 points; right?

4 A Yes.

5 Q Now, let's stop there. \$250,000 liquid and enough
6 to run your shop for a year were the only statutory
7 requirements; right?

8 A Yes.

9 Q Okay. So once you get to that point you're in fact
10 awarding points for being richer or wealthier than the person
11 that has enough to pay the \$250,000 liquid and operate for a
12 year; is that fair to say?

13 A If they fall into the different segments they would
14 get more points.

15 Q So it is fair to say?

16 A Yeah. If they provided information showing that
17 they received -- or have total assets larger than others, they
18 would get more points.

19 Q All right. Now let's talk about that in the context
20 of diversity, and specifically minorities. Were there a lot
21 of minority applicants that had over three and a half million
22 dollars?

23 A I don't know. I didn't evaluate the applications.

24 Q Do you think there's anything about having more than
25 three and a half million dollars that makes somebody more

1 qualified in a direct and demonstrable manner to operate a
2 marijuana establishment than somebody that has only a million
3 and a half dollars?

4 A You know, I don't know if I'd be the right one to
5 answer that question. Probably the evaluators that had more
6 in-depth knowledge of the application as a whole would be
7 better to answer.

8 Q Sir, did you leave, you meaning the Department of
9 Taxation leave it to the evaluators to decide whether having
10 more money made one more qualified to -- in a direct and
11 demonstrable fashion to have a -- to operate a marijuana
12 establishment?

13 A No.

14 Q No. You trained them. And you're the ones, you
15 meaning the Department, not you as an individual, you told
16 them how to score them. You told them, if they have this much
17 money they get these many points and if they have more they
18 get more; right?

19 A That's correct.

20 Q Because the rich always get more; right?

21 MR. KOCH: Objection. Argumentative.

22 THE COURT: Overruled.

23 BY MR. GENTILE:

24 Q You can answer now.

25 THE COURT: Yes. You can answer. Sorry.

1 THE WITNESS: I don't know if the rich would get
2 more -- can you be more specific on the question.

3 BY MR. GENTILE:

4 Q I'll move on to another question.

5 A All right.

6 Q Let's talk about ownership. Oh. Wait. Wait, wait,
7 wait. No. Let's talk about the taxes section. We can go
8 back to that one now.

9 Can you explain to me how paying more taxes to the
10 State of Nevada than the next guy does makes one more directly
11 and demonstrably able to operate a marijuana establishment?

12 A I don't think I can, because that's more of a
13 statutory question with the "demonstrably. I know these
14 criterias were put in place -- you know, it might be a better
15 question for Mr. Pupo at this point with the taxes section.

16 Q Okay. And the more taxes you pay the more points
17 you get, according to what's on the screen right now; right?

18 A That's correct.

19 Q So if you pay a million dollars in taxes you
20 get 4 points. If you're a pauper and you only pay a half
21 a million dollars, you get 1 point, and if you got more
22 \$8 million that you're paying taxes on, you get 10 points;
23 right?

24 A Yes.

25 THE COURT: Can I stop you for a second.

1 MR. GENTILE: Sure.

2 THE COURT: Sir, the substance of these charts that
3 we're looking at that were given to the evaluators to use as
4 part of their review of the applications in scoring, who
5 created the substance of the information that's contained in
6 those forms?

7 THE WITNESS: So these forms were used in the 2014
8 medical marijuana application process. They were created by
9 QuantumMark back then. They came over to the Department of
10 Taxation from DPBH, and they were amended by Mr. Pupo, myself
11 and Kara Cronkhite to align with NAC 453D.

12 THE COURT: And so you -- wait. Let me finish.

13 You said you were not aware of the constitutional
14 limitation and modifications to the language of the
15 initiative. Did that impact your ability to properly prepare
16 substantial information in compliance with Question 2, which
17 became 453D? Was that a bad question? You want me to ask it
18 again?

19 THE WITNESS: Yes, please.

20 THE COURT: Because you didn't know that you
21 couldn't change what Question 2 said and you had to limit
22 yourself to Question 2, did that impact your ability as one of
23 the people drafting the substance to make it compliant with
24 Question 2, which became 453D?

25 THE WITNESS: We created these just based on

1 NAC 453D. So that's the only thing that I went by when I was
2 comparing these charts to the regulations.

3 THE COURT: And you didn't consult with anybody in
4 the Attorney General's Office who might have been able to give
5 you good advice about what to do?

6 THE WITNESS: That would have been Mr. Pupo's
7 position to do that, not mine.

8 THE COURT: Okay. Thanks. I just was trying to
9 make sure I understood. So Mr. Gentile is asking you
10 questions that some of them you don't really know the answer
11 to. And I understand that. I was just trying to cut to the
12 chase. Thank you.

13 Sorry, Mr. Gentile. Thank you for allowing me
14 interrupt.

15 MR. GENTILE: Thank you for saving 30 minutes.

16 THE COURT: I'm not sure I did.

17 BY MR. GENTILE:

18 Q One more area in that area, because I'm not sure
19 that it has been covered. Can you tell me -- you would agree,
20 wouldn't you, that people who pay more taxes than the next guy
21 are making more money than the next guy and don't have as good
22 lawyers to keep them from having to pay the taxes?

23 MS. SHELL: Objection. Argumentative.

24 THE COURT: Sustained. Can you rephrase your
25 question so it's better.

1 MR. GENTILE: Sure.

2 BY MR. GENTILE:

3 Q You would agree that our tax system is based on how
4 much revenue -- excuse me, how much income someone is taking
5 in?

6 A Yes.

7 Q Okay. Or in the sense of non-income taxes but sales
8 taxes how one is doing in gross sales; right?

9 A Yes.

10 Q And so the more money you're making the more taxes
11 you pay.

12 A Yes.

13 Q With regard to contributions to municipality or
14 charities, charitable donations, that's also related to the
15 expenditure of money; right?

16 A Yes.

17 Q Can you tell me how making charitable donations is
18 directly and demonstrably related to the ability to operate a
19 marijuana establishment?

20 A So we took that requirement out of the regulations
21 and put it in the scoring tool. How it relates back to the
22 statute and the definition and the understanding of the
23 statute, I don't know if I'd be the right person to tie that
24 back.

25 Q Got you. So you took that out of regulations, but

1 you put it into the scoring tool?

2 A Yes.

3 Q All right. So -- okay. Let's talk about owners.
4 If I'm a shareholder in a corporation, am I an owner of that
5 company from the way you used owner in the process here?

6 A For corporations we like to have the officers of the
7 corporation for, you know, vetting them for background checks
8 and diversity purposes, or what was listed in the application
9 on Attachment A and C, I think it was.

10 Q What does the statute say with regard to owner?
11 What are you supposed to do with owners? Who's supposed to
12 file an application?

13 A I think the statute breaks it down, if I'm correct,
14 from corporation and partnerships and s. Corporations are
15 officers, partnerships are partners, and are members.

16 Q Sir, isn't it accurate that with regard to filing an
17 application all owners, officers, and board members have to
18 file the application?

19 A Yes.

20 Q All right.

21 THE COURT: I'm going to hand you the statute book,
22 because sometimes Mr. Gentile's asking you what the statute
23 says, and I'm going to let you have the opportunity to look in
24 the pocket part, if you want to, which is the very back part,
25 because I know that some of the things he's asking you may be

1 administrative regulations and other things may be statutes.
2 So if he asks you statutes, they're in the back of the book in
3 that little paper part.

4 THE WITNESS: Thank you, Your Honor.

5 THE COURT: All right. Just trying to make sure to
6 clear to save Mr. Shevorski time straightening it out later.

7 MR. SHEVORSKI: If you're clear, I'm clear, Your
8 Honor.

9 THE COURT: I'm not clear. I've got so many
10 questions for you guys you're going to have to love your
11 argument.

12 BY MR. GENTILE:

13 Q Do you have the statute in front of you?

14 A I do.

15 Q Now, the statute doesn't define "owner," does it?

16 A I would have to -- I'd have to look.

17 Q Well, please look in the definition section of the
18 statute. It's just the first article of the statute.

19 (Pause in the proceedings)

20 BY MR. GENTILE:

21 Q Did you find it? If you look at the index, they're
22 actually alphabetically listed. You might go down to "all"
23 and see if you find it.

24 A I don't see it in the definitions.

25 Q Okay. Would you turn to 453D.200 and go to

1 paragraph number (6). So at least as far as you've been able
2 to explore it, you're willing to accept that the statute does
3 not define "owner." Am I right?

4 A Yeah. I do not see it in the definitions section.

5 Q Right. Now, if you will, go to paragraph (6) of
6 453D.200. See it?

7 A Yes.

8 Q Will you read it aloud.

9 A "The Department shall conduct a background check on
10 each prospective owner, officer, and board member of the
11 marijuana establishment license applicant."

12 Q Okay. If I tell you that that language was
13 absolutely in the ballot question with regard to the proposed
14 statute, would you have any reason to believe that I'm not
15 telling you the truth?

16 A I haven't compared the two, so I would -- I wouldn't
17 be able to say yes or no.

18 Q Okay. Well, let's -- for purposes of the followup
19 questions I want to ask it to you as a hypothetical, then.
20 Because if you can't accept it as true, I'm certainly not able
21 to force you to do that. But hypothetically let's assume for
22 purposes of my followup question that the language that's on
23 the screen that you just read aloud comes right from the
24 Ballot Question 2; okay?

25 A Okay.

1 Q All right. What does "owner" mean in that sentence?

2 A It would -- in this sense it would refer to the
3 owner of entity applying on the application.

4 Q All right. So if it was a sole proprietorship, that
5 would be easy to determine; right?

6 A Yes.

7 Q All right. If it was a partnership that was not
8 some sort of a fictitious entity, the partners would be easy
9 to determine; right?

10 A Yes.

11 Q All right. And every partner would have to be
12 background checked; correct?

13 A Yes.

14 Q And you would have done that?

15 A Uh-huh.

16 Q Right?

17 A Yes.

18 Q Okay. If it was a corporation, corporations have
19 officers and boards; right?

20 A Yes, they do.

21 Q All right. But they also have shareholders; right?

22 A Yes.

23 Q Now, an officer doesn't have to be an owner of a
24 corporation, does he?

25 A I'm not sure.

1 Q You're not sure. Okay. Members of the board don't
2 necessarily have to have an ownership interest in a
3 corporation, do they?

4 A No.

5 Q No. Okay. Shareholders own a corporation. Is that
6 fair to say?

7 A Yes.

8 Q Okay. So if it was a corporate applicant and you
9 were to adhere strictly to paragraph (6) as written, you'd
10 have to background check each shareholder; right?

11 MR. SHEVORSKI: Object to the form.

12 THE COURT: Overruled. You can answer.

13 THE WITNESS: Yeah. In that context, yes.

14 BY MR. GENTILE:

15 Q Okay. Now, if it's a -- if it's a family company
16 and it's what they call closely held, that's not a hard thing
17 to do, is it?

18 A No, it's not.

19 Q Because they don't have millions of shareholders;
20 right?

21 A Right.

22 Q Okay. The language that you're looking at I've
23 asked you to assume came right out of the ballot question as
24 proposed in 2017 -- excuse me, 2016. Okay?

25 Now here's my question for you. Did the Department

1 of Taxation in fact conduct a background check of every
2 prospective shareholder of every applicant?

3 A No, they did not.

4 Q I want to call your attention to a part of the
5 Nevada -- excuse me, of the regulations, NAC 453D.255. Do you
6 have that?

7 THE COURT: Sir, those are not in that book, so --

8 MR. GENTILE: No, I know they're not in that book.
9 That's why I'm having them pull it.

10 THE COURT: Yes. But he may not know.

11 MR. GENTILE: I'm having him pull it out.

12 THE COURT: It's on the screen now.

13 BY MR. GENTILE:

14 Q Okay. You see it?

15 A Yes.

16 Q See paragraph (1)? Read it aloud, please.

17 A "Except as otherwise required in subsection (2), the
18 requirements of this chapter concerning owners of a marijuana
19 establishment only apply to persons of aggregate ownership
20 interest of 5 percent or more in a marijuana establishment."

21 Q That language is different than what was in the
22 ballot question, isn't it?

23 A I don't know.

24 Q Well, you just read the ballot question [inaudible].

25 A 453D.

1 Q Which was the ballot question.

2 A Yeah.

3 Q So that's different than 453D.200; right?

4 A Yes.

5 Q Who came up with that one?

6 A I don't know. That would probably be a question for
7 Mr. Pupo.

8 Q Okay. In fact the language of Regulation
9 453D.255(1) is what was in fact done by the Department of
10 Taxation during the application evaluation process; am I
11 right?

12 A Can you repeat that question, please. I'm sorry,
13 sir.

14 Q Sure. In fact the language of 453D.255(1) is what
15 the Department of Taxation in fact did during the application
16 process. It only asked for backgrounds of shareholders that
17 had more than 5 percent in corporations.

18 A Yeah. But -- that's correct, but in the application
19 process applicants in this last round were already current
20 licensees, so the majority of the applicants that were
21 applying were already vetted through the Department, because
22 they had a valid cultivation or production or dispensary or
23 retail store.

24 Q Were there publicly traded companies that applied?

25 A I would assume so. I didn't look at the

1 applications that correctly -- that closely, but, yes, there
2 were.

3 Q All right. We're going to get to that in a second.

4 Now, you attempted -- you, again, I'm not talking
5 about you as an individual, the Department of Taxation
6 attempted to -- at least in words to avoid monopolization of
7 licenses; right?

8 A Yes.

9 Q Would you agree that that goal is nowhere to be
10 found and language permitting it is nowhere to be found in NRS
11 453D?

12 A I would have to refer back to the statute.

13 Q Go ahead. You have it in front of you.

14 (Pause in the proceedings)

15 THE WITNESS: I don't see it in NRS.

16 BY MR. GENTILE:

17 Q Neither did I. And if get another week to read it
18 you're not going to find it, okay.

19 A Yes.

20 Q So who came up with that one?

21 A That would probably be another question for Mr.
22 Pupo.

23 Q In the sense that he came up with it, or in the
24 sense that he might now?

25 A He was part of the regulations -- more the

1 finalizing of them and creation of them.

2 Q Was he the person primarily responsible for the
3 application, in other words, the form of words and that
4 aspect?

5 A He was -- Mr. Pupo would always give final approval
6 on stuff, but the application was put together with -- by Kara
7 Cronkhite, myself, and Mr. Pupo. And, again, we took the
8 application from 2014, compared that to the current NRS or NAC
9 453D, updated it as needed, and then we actually threw it
10 around through our committee, through the office and the
11 program, and everybody fact checked it and ran it back and
12 forth, did the crosswalk to the regulations.

13 Q And I think I asked you yesterday if you had a
14 representative of the Attorney General's Office or some other
15 attorney working with you in that process, and you said you
16 did not.

17 A I think I said, if I recall, that Mr. Pupo would
18 know that.

19 Q Mr. Pupo what?

20 A He would know if he himself worked --

21 Q He would know.

22 A I did not -- I did not work with a Deputy Attorney
23 General.

24 Q All right. Why'd you go outside the agency for the
25 evaluators? You went -- let me take a step back. You went

1 outside the agency and hired QuantumMark to basically do the
2 work on creating the regulations. People from the agency
3 worked with them, but they did the heavy lifting on it; right?

4 A That's correct.

5 Q All right. Why'd you go outside the agency for the
6 evaluation?

7 A For the staff.

8 Q If you want to call it that. There were, from what
9 I understand, eight people. I read the -- you had fifteen --
10 you had the budget and permission to hire fifteen Manpower
11 employees for that process, but you only hired eight?

12 A Yes. That's correct.

13 Q Forgive me, but it's kind of rare for an agency to
14 spend less than they're given. How'd you come with eight with
15 462 applications?

16 A We wanted to get the correct qualifications and a
17 good solid group of evaluators. If you have too many, then --
18 during that evaluation process the fewer people to evaluate
19 the applications the more consistency and impartial and
20 unbiased you would get. So three people on the non-identified
21 team side and three people on the identified team side was
22 ideal. However, we didn't know -- we didn't know how many
23 applications we were going to get until the 20th of September
24 when 5:00 o'clock hit and the doors were closed. We did have
25 a contingency plan to hire more if needed in order to complete

1 the application process -- or the evaluation process within
2 90 days.

3 Q Mr. Plaskon was here the other day, and we call to
4 his attention a text message wherein he anticipated that by
5 the 20th of September he'd have a hundred applications. Was
6 that what you anticipated by September 20th before they
7 actually all got there?

8 A Oh, I -- we -- we had no idea. I mean, a lot of
9 people had ideas of how many we were going to get, and, you
10 know, they were thinking we would get -- I don't know. I
11 forgot. I probably had a number in my head at that time, but
12 we had no idea.

13 Q What was the over and under? In your head.

14 A Well, I think I was anticipating 400.

15 Q Why go outside? It was only eight people. Why go
16 outside the agency?

17 A Well, ultimately I wasn't the deciding factor to do
18 that. That would have been left up to Mr. Pupo or at the time
19 it was Director Anderson. But we were instructed to do that.
20 Going outside the agency, in my opinion -- because now that
21 the industry is somewhat mature and the marijuana program has
22 been around for a little bit of time staff internally wouldn't
23 be necessarily unbiased, because they may be able to identify
24 an applicant by just their SOPs, their standard operating
25 procedures because they may have read them before. So having

1 an internal Marijuana Enforcement Division staff evaluate the
2 applicants, they already -- they would know who they were. So
3 getting people from the outside allowed us to have unbiased.
4 They don't have knowledge of the applicant. We're able to get
5 people with the necessarily experience and background that we
6 were looking for for the different categories. Nobody in the
7 Marijuana Enforcement Division, you know, is an accountant per
8 se. So we were able to go out and recruit staff that would
9 fulfill the need.

10 Q I'm going to ask you a hypothetical question. Let's
11 say somebody goes to work for the Department of Taxation in
12 the Marijuana Enforcement Group. Let's pick a year. How
13 about 2009. And let's say that they stay there for 20 years.
14 So now they've got 20 years in the Marijuana Enforcement
15 Group, and then they retire. Would you in your opinion just
16 on that alone, just on what I told you alone, no personalities
17 involved, no bad habits involved, just that alone, would you believe
18 that that characteristic, that history is directly and
19 demonstrably indicative of someone's ability to operate a
20 marijuana establishment? Because I could tell you my answer
21 to that would be yes.

22 A Somebody that had experience would, you know, they
23 would have gained the experience.

24 Q Would make them demonstrably able to operate at
25 least in the industry; fair to say?

1 A I don't know. That's a hard situation to imagine,
2 because I don't have any -- I don't know what the situation
3 would be in the hypothetical the position.

4 Q Okay. How about 10 years' experience? That's less.
5 Would that make them at least knowledgeable about the industry
6 to be able to be directly and demonstrably capable of
7 operating a marijuana establishment?

8 A Again, it depends on the situation. I mean,
9 experience is experience. I guess experience would help
10 anybody get any job and be a candidate above another one.

11 Q Would you agree, sir, that the people who were in
12 fact working for the Department of Taxation and had been doing
13 so in the Marijuana Enforcement Group, regardless of where,
14 certainly knew more about the operation of a marijuana
15 establishment, be it medical or otherwise, than hiring outside
16 people?

17 A The Marijuana Enforcement staff -- they have a
18 really good understanding of the regulations and how to look
19 for compliance pieces. They're not necessarily, you know,
20 good at running a retail store or good at running a laboratory
21 or even a production facility. But they are good -- what they
22 are good at is and what we look for in the qualifications to
23 hire somebody is that they can take the regulations and apply
24 them and look for compliance issues.

25 Q But you don't think they would have been able to

1 score these applications?

2 A They would be able to score them, but, again, they
3 would -- they would have knowledge of the applicant, which
4 would maybe -- could potentially give bias.

5 Q So you traded competency for nonbias?

6 MS. SHELL: Objection. Argumentative.

7 THE COURT: Overruled. You only win once.

8 MS. SHELL: I'll take it, Your Honor.

9 THE COURT: That means that you get to answer.

10 THE WITNESS: Okay. Can you repeat that question,
11 sir.

12 BY MR. GENTILE:

13 Q No. We'll go on.

14 A All right.

15 Q I want you -- well, you don't have it in front of
16 you.

17 MR. GENTILE: Can you pull up NAC 453D.260(2),
18 please.

19 BY MR. GENTILE:

20 Q Okay. Would you read that aloud, please.

21 A "When the Department issues a request for
22 application pursuant to this section the Department will
23 include in the request the point values that will be allocated
24 to each applicant -- applicable portion of the application."

25 Q Okay. The application that was put out there by the

1 Department for -- that we're here about for the September
2 20th, 2018, deadline contained points for each section, but it
3 did not break down and advise the applicant how each subpart
4 of that section would be scored. Can we agree to that?

5 A Yeah. There were six major categories, I think.
6 I'd have to look at the application. I think it was six.

7 Q And you only put the major category on in terms of,
8 this is worth 60 points. You didn't tell them, this part of
9 it's worth 5, this part of it's worth 10, this part of it's
10 worth 20. You didn't do that?

11 A Not in the points sections. But it does say
12 throughout the application where to include the subcategories,
13 which would show where that subcategory fell under the major
14 category.

15 Q We asked for the production of your telephone text
16 messages and calendar and stuff like that.

17 A Uh-huh.

18 Q We were given both yours and Mr. Plaskon's. Now, I
19 know this has already come to your attention. There is a big
20 difference between the two.

21 A Yes.

22 Q The largest, most glaring one is that there are
23 messages on Mr. Plaskon's from you that don't appear on your
24 phone. How would he do that?

25 A When was the time frame? Because I -- my process is

1 to delete text messages periodically just to keep my phone
2 clean.

3 Q So you delete messages.

4 A I don't delete, but I clear -- I keep my phone
5 clear.

6 Q You learned on December 13th -- in fact, you were in
7 court, weren't you?

8 A Yes, I was. I think it was --

9 Q So you knew that day that your phone was going to be
10 forensically examined, it was going to be mirrored.

11 A I received the order on the 14th.

12 Q Weren't you in court on the 13th?

13 A I was.

14 Q Was it not discussed on the 13th in open court?

15 A It was discussed.

16 Q Oh. But it wasn't a written order yet?

17 A I --

18 Q Am I right? It wasn't a written order yet?

19 A Right.

20 Q You received the written order on the 14th.

21 A From the Deputy Attorney General.

22 THE COURT: Gotta let him finish.

23 Sir, did you finish your answer? Did you finish
24 your answer?

25 THE WITNESS: Can you repeat the question.

1 THE COURT: He said you were in court, you didn't
2 need a written order; right?

3 THE WITNESS: I don't know the answer to that.

4 THE COURT: Okay.

5 BY MR. GENTILE:

6 Q How frequently on a daily basis between August of
7 2008 and the -- did I say '08 -- August of 2018 and New Year's
8 Eve 2018 would you estimate you communicated with Mr. Plaskon
9 via text message?

10 A It's hard to say, but frequently. I mean, most of
11 our communications were -- you know, he's an employee of mine,
12 so, you know, whatever his status is coming to work and --

13 Q Well, he's not really an employee of yours. He's an
14 employee of the State of Nevada, isn't he?

15 A Yeah. He reports to me.

16 Q All right. You supervise him.

17 A Yes.

18 MR. GENTILE: Can we pull up Exhibit 108, please.
19 And go to page 31, entries 381 to 376.

20 BY MR. GENTILE:

21 Q You see those?

22 A Which ones?

23 Q Starting at 381 and going up from there to 376.

24 A Yes, I see them.

25 Q Two days before the deadline for filing you initiate

1 a text to Mr. Plaskon saying that, "Okay, I got some direction
2 from Jorge on some things. I'll call you in the morning."

3 See that?

4 A Yes.

5 Q Okay. And then you receive one at Number 379 from
6 Mr. Plaskon -- oh. Wait. I'm sorry. The one up from that
7 you receive one from Mr. Plaskon saying, "It's a practice app.
8 They are struggling a little with diversity section. If they
9 don't resolve it by the fifth application, I'll ask you about
10 it."

11 And then he sends you one right after that. He asks
12 if Jorge can give us any clarification on the diversity
13 section. And then he sends you another one that says, "Call
14 whenever you are ready." And then he sends you another one,
15 that was the next day, though, where it says, "Janine, Diane,
16 and I didn't find race or ethnicity in 453D. Should race have
17 been removed as part of the retail application? Should
18 evaluators be even looking at diversity. AB422 doesn't seem
19 to apply, because it's just medical. Did we leave something
20 in this app on accident? Just some thoughts."

21 You remember those communications?

22 A Well, I do now, yeah.

23
24 Q You do now.

25 A Now that I see them.