

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 10:48 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 37

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46, 47	Preliminary Injunction Hearing, Defendant's Exhibit 2009 Governor's Task Force Report	n/a	AA 011408 - AA 011568
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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
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32, 33	Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 4	5/30/19	AA 007844 - AA 008086
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45, 46	Transcripts for the Evidentiary Hearing on Motions for Preliminary Injunction Day 20	8/16/19	AA 011166 - AA 011332

CERTIFICATE OF SERVICE

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

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/s/ David R. Koch

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1 A Yes.

2 Q The top of the page.

3 A Uh-huh.

4 Q And this is in unincorporated Clark County; correct?

5 A Yes.

6 Q If you look at the second full paragraph, the
7 sentence that starts with "Thus," do you see where that's
8 indicated?

9 A Yes, I do.

10 Q Okay. "Thus, the approved license transfer will
11 result in closing 4850 West Sunset Road location prior to
12 November 1st, 2018." Now, previously when we looked at the
13 last page we were discussing didn't it say that it already
14 closed?

15 A I think it did. Yes, I recall.

16 Q Can you tell from this application whether that
17 location at this time was open or closed?

18 A Not from this application.

19 Q Can you tell from this application how long it had
20 been closed?

21 A Not here. No, I can't.

22 Q In the budget area it said it had been previously
23 operating; correct?

24 A Yes.

25 Q And with respect to -- now, you're -- you understood

1 -- or you understand that MM Development had a transfer of a
2 particular license, correct, from West Sunset Road to a space
3 on Desert Inn?

4 A Yes, I was aware of that.

5 Q And that was the transfer in both the retail and the
6 medical marijuana license?

7 A Yes.

8 Q And they were going -- they were attempting to gain
9 a new license and reopen West Sunset Road; correct?

10 A Yes, that's what it appears to be, yes.

11 Q What process, if any, would apply to someone seeking
12 a new license for that location?

13 A They would have the same requirements that any other
14 licensee would have. They have to fulfill the conditional
15 requirements, including initial inspection and approval,
16 before they become operational.

17 Q They'd have to have their signage re-approved?

18 A Yes.

19 Q They'd have to be inspected?

20 A Yes.

21 Q They'd have to have their floor plan approved?

22 A Yes.

23 Q They couldn't just rely on what they had done
24 before; correct?

25 A No, they wouldn't.

1 Q Let's go to DOTMM1031.

2 A Okay. I'm there.

3 Q Who would have done the training with respect to --
4 for Manpower personnel on the category described as Tab 3?

5 A That would have been Ms. Cronkhite.

6 Q Ms. Kara Cronkhite?

7 A Yes.

8 Q Okay. When Mr. Kemp was talking to you he mentioned
9 there was a floor plan and there were pictures of the facility
10 when it was in operation. Please look through Tab 3 and let
11 me know if you see any pictures of the facility in operation.

12 A I don't. I just see the floor plans and artist
13 renderings.

14 Q Let's go back to page DOTMM11. Are you there?

15 A All right. I'm there.

16 Q There are two pictures on that page; correct?

17 A Yes.

18 Q Two pictures on the next page?

19 A Yes.

20 Q And if you look at DOTMM9, it says, "pictures of
21 existing facility"; correct? At the bottom of the page on 9,
22 below location map.

23 A Yes, it does.

24 Q Okay. With respect to that page do you see a date
25 for when those pictures were taken?

1 A I don't. I don't see a date.

2 Q The medicine facility had been operational as a
3 medical marijuana facility; correct?

4 A Yes.

5 Q So it was in existence at that -- when it was
6 operating as a medical marijuana facility?

7 A Yes.

8 Q Now, on page 11 do you see any date with respect to
9 those pictures?

10 A I don't see any dates on 11.

11 Q How about 12? Do you see any dates there?

12 A No, I don't.

13 Q Is there any way from the document you've seen to
14 tell when those pictures were taken from the application?

15 A Not from the pictures.

16 Q And we've already seen persons reviewing these
17 applications, occasionally they say it was previously operated
18 and closed. And they also say it will be closed; correct?

19 A That's correct, yes.

20 Q Who was weighing that information in order to grade
21 MM Development on the building plan area?

22 A The evaluators.

23 Q And they would have to -- as part of their job they
24 would have to weigh that information, wouldn't they?

25 A They would, yes.

1 Q They don't know when this particular facility was
2 closed.

3 A No.

4 Q They don't know when these pictures were taken.

5 A That's correct.

6 Q My friend Mr. Kemp asked you quite a bit about hand
7 sinks. Do you recall that?

8 A I do, yes.

9 Q Who gave the training to the Manpower folks on hand
10 sinks? Would that be Ms. Cronkhite?

11 A Yes, it would.

12 Q Let's go to DOTMM001032.

13 A Okay. I'm there now.

14 Q On the preceding page it might be able to help you
15 there. It says, "The company --" if you would get there real
16 quick. "The company has included two sets of plans in this
17 non-identified section. The first set of plans is for a
18 leased 4600-square-foot facility already built as shown and
19 has been operated as a fully compliant Nevada licensed
20 marijuana dispensary and has previously passed Nevada
21 Department of Taxation inspection and approvals." Again, it
22 says, "has been operated." We can't tell from that sentence
23 when it was opened or closed; correct?

24 A Correct.

25 Q And turning over to the next page, looks like

1 there's a hand sink in the break room, and there are hand
2 sinks in the toilet areas. Do you see any hand sinks other
3 than the one in the break room and other than the ones in the
4 toilet facilities in the entire building?

5 A I don't. It looks like those are the three sinks.

6 Q Okay. Are you familiar with the regulations
7 pertaining to how many hand sinks other than hand sinks in the
8 bathroom areas are required for a marijuana establishment?

9 A Yes.

10 Q I'm at NAC 453D.446(b). "Except for a marijuana
11 distributor, at least one hand-washing sink not located in a
12 toilet facility and located away from any area in which edible
13 marijuana products are cooked or otherwise prepared to prevent
14 splash contamination." Is that consistent with your
15 understanding of regulations pertaining to hand sinks in
16 marijuana establishments?

17 A Yes.

18 Q Okay. And who would have given the training to the
19 Manpower associates with respect to that particular issue?

20 A Ms. Cronkhite.

21 Q Mr. Kemp asked you about advertising and signage.
22 Do you recall that?

23 A Yes, I think I recall.

24 Q And there was a note in a Manpower grader as no
25 advertising or signage; correct?

1 A Yes.

2 Q As a new licensee for that particular facility, if
3 it was going to reopen, they would have to get approval, would
4 they not, for their advertising and signage?

5 A Yes, they would.

6 Q It may be if their advertising and signage is
7 exactly the same, but it may not; correct?

8 A It could be, but it may not.

9 Q Let's go to Exhibit 21. It should be behind you.
10 We're going to be on -- starting on page 2.

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

12 THE COURT: You may.

13 BY MR. SHEVORSKI:

14 Q And who is the applicant here?

15 A It's LivFree Wellness LLC.

16 Q And forward -- Mr. Kemp was talking about some
17 people got Exhibit -- they got Exhibit 5, and some people got
18 Exhibit 5A. By looking at page 2, which one does it look like
19 LivFree got?

20 A Can you refresh my memory on A and B.

21 Q Sure. Attachment A, which you have in front of you,
22 LivFree Bates Number 2, it has in the second quadrant -- it
23 says, "Marijuana establishment's proposed physical address if
24 the applicant owns property or has secured a lease or other
25 property agreement (this must be a Nevada address and cannot

1 be a P.O. box)." Do you need to see Exhibit 5A, or does that
2 refresh your recollection as to --

3 A I wouldn't mind seeing 5A, if you can, please.

4 MR. SHEVORSKI: May I approach, Your Honor.

5 THE COURT: You may.

6 (Court recessed at 2:41 p.m., until 2:53 p.m.)

7 THE COURT: So, as I told Mr. Shevorski, I would
8 really like to get this witness done today.

9 Okay. Mr. Shevorski, you're back up.

10 MR. SHEVORSKI: I'll move it along, Your Honor.

11 THE COURT: I need the witness, though.

12 Okay. Go.

13 BY MR. SHEVORSKI:

14 Q Okay. Mr. Gilbert, please turn to Exhibit 21,
15 page 2, DOT-LivFree2. I believe you also have up there
16 Exhibit 5A.

17 A Yes.

18 Q Does that appear to be identical to Exhibit 5A with
19 respect to the second quadrant that starts "Marijuana
20 establishment's proposed physical address"?

21 A Yes, it does.

22 Q Okay. Now turn to DOT-LivFree5. That's in Exhibit
23 21.

24 A Right.

25 Q I apologize.

1 A Is it what's up here on the screen?

2 Q Yeah. It's just -- if you look down at the bottom
3 right it says, LivFree5. Are you there?

4 A I don't know.

5 Q Exhibit 21.

6 A Oh. 005?

7 Q Yes, sir.

8 A Got it.

9 Q Okay. Now, I want you to compare that to
10 Exhibit 5A, Attachment E to Exhibit 5A. And that's on
11 page 29, if that helps you, Exhibit 5A. Do they appear to be
12 the same, or different?

13 A To 005?

14 Q To Exhibit 5A, Attachment E to Exhibit 5A.
15 Now, I'm just interested in the language in the
16 first quadrant.

17 A They appear to be the same.

18 Q They appear to be the same?

19 A Yes.

20 Q Look again.

21 A No. They're not the same.

22 Q They're not the same.

23 A Sorry.

24 Q Now look at Attachment E in Exhibit 5. And I'm
25 interested in the first quadrant. Are you there?

1 A I am. I'm looking at it right now.

2 Q Okay. Does it appear that LivFree used Attachment A
3 from 5A and then used Attachment E from Exhibit 5 in their
4 application?

5 A Yeah. I mean, these are the same.

6 Q Excuse me?

7 A Can we repeat that question.

8 Q Does it appear from reviewing this application that
9 LivFree used Attachment A from Exhibit 5A and Attachment E
10 from Exhibit 5?

11 A Yes.

12 Q Let's go to page -- Exhibit 21, DOT-LivFree130. Are
13 you there?

14 A Yes, I am.

15 Q Okay. Now, this is Tab 8, Documentation of Liquid
16 Assets. Are you familiar with this tab as it relates to
17 what's called --

18 We know they got Exhibit 5A; correct?

19 A Yes.

20 Q And read along with me. "Documentation
21 demonstrating the liquid assets and the source of those liquid
22 assets from a financial institution in this state or in any
23 other state or the District of Columbia must be included in
24 this tab and demonstrate the following criteria: That the
25 applicant has at least 250,000 in liquid assets which are

1 unencumbered and can be converted within 30 days after request
2 to liquid such assets and the source of those liquid assets."

3 Did I read that correct?

4 A Yes.

5 Q Okay. Would you turn to DOT-LivFree132. Are you
6 there?

7 A Yes, I am.

8 Q Upper left-hand corner says it's a balance sheet;
9 correct?

10 A That's correct.

11 Q Do you see an indication that this was a document
12 from a financial institution?

13 A No, I don't.

14 Q Go to page 134. Are you there?

15 A Yes.

16 Q Who's the owner of that checking account?

17 A Bilco Holdings LLC.

18 Q Are they the applicant?

19 A No. It's LivFree Wellness.

20 Q Now let's go back to 130. At bottom paragraph it
21 says, "The following documents are attached following Tab
22 5.2.8.2." See where that's indicated?

23 A Yes.

24 Q Why don't you read that to yourself and let me know
25 when you're through.

1 A Okay.

2 Q It says, "This account is owned by LivFree Wellness
3 as majority owner."

4 Now, going back to page 134, do you see any
5 information on that checking account statement that shows that
6 LivFree has any right to access those funds?

7 A No, I don't.

8 Q Staying on 134, are you aware of the term "credit"
9 with relation to consumer banking?

10 A Yes.

11 Q Okay. And what's your understanding of the word
12 "credit"?

13 A Funds available for use.

14 Q It's also possible that a credit is when someone
15 deposits money into an account?

16 A Yes.

17 Q But look, there's a credit on 7/20. Do you see
18 that? Looks like a wire transfer.

19 A Yeah, I see that.

20 Q It looks like it's from BP Solutions LLC?

21 A Yes.

22 Q If that's what we can interpret?

23 A Yes.

24 Q Is BP Solutions LLC the applicant?

25 A No, they're not.

1 Q Let's look at debits. And what's your understanding
2 of "debit" in relation to consumer banking?

3 A Money going out.

4 Q Taking money out. It looks like there's a debit on
5 7/3?

6 A Yes.

7 Q Looks like Minu Holdings LLC, it's a wire transfer
8 to them?

9 A Yes.

10 Q Is Minu Holdings LLC the applicant?

11 A No, they're not.

12 Q So this account is owned by Bilco Holdings LLC, and
13 it looks like several different companies are accessing it;
14 correct?

15 A Yes.

16 Q And there's nothing on, for example, 5.2.82 at DOT-
17 LivFree133 from the financial institution showing that LivFree
18 has a legal right to access those funds?

19 A No, there's not.

20 Q Let's go back to the balance sheet, 132, and look at
21 assets. It says, "Cash in Bilco Holdings." We've already
22 been through that Bilco Holdings is not the applicant;
23 correct?

24 A That's correct.

25 Q And it says, "Cash in management company, overages."

1 We don't have any idea who the management company is, do we?

2 A No, we don't.

3 Q Now, going back to pages 133 through 136, is there
4 any information from a financial institution regarding that
5 cash in management account, which is \$678,687 on 7/31?

6 A I don't see anything.

7 Q Now, who would have given the training to the
8 Manpower associates to evaluate that balance sheet and that
9 checking account statement in relation to Tab 8?

10 A Damon Hernandez.

11 Q Let's go to LivFree page -- that same exhibit --
12 1555.

13 A Okay. I'm there.

14 Q Okay. Read that first paragraph, and let me know
15 when you're done.

16 A Okay. I'm done.

17 Q Okay. Reading that paragraph it's your
18 understanding that those are the owner's assets, right, that
19 are \$217,812,665?

20 A Yes.

21 Q Does it say anywhere in that paragraph that those
22 are the resources of the applicant, that the applicant has
23 217,812,665?

24 A No, it doesn't.

25 Q Let's go to the balance sheet, the next page. Are

1 you there?

2 A Yes.

3 Q It says, "LivFree Wellness LLC, owner, financial
4 summary; correct?

5 A Yes, it does.

6 Q You see under the left it says "Last name, first
7 name." Do you see LivFree listed there?

8 A No, I don't.

9 Q Let's go to DOT-LivFree1586. Let me know when
10 you're there?

11 A Okay. I'm there.

12 Q "If the applicant is relying on funds from an owner,
13 officer, or board member or any other source, evidence that
14 such person has unconditionally committed such funds to the
15 use of the applicant in the event the Department awards a
16 recreational marijuana establishment license to the
17 applicant." Did I read that correctly?

18 A Yes, you did.

19 Q What did LivFree write under 5.2.11.2? It says,
20 "LivFree is a thriving business that will not need to rely on
21 moneys from outside sources. The profits from the current
22 operations in the state will allow for future growth in the
23 industry." Did I read that correctly?

24 A Yes, you did.

25 Q So LivFree, based on the information here, is not

1 relying on the owner's balance sheet; correct?

2 A Correct.

3 Q There's no unconditional commitment of those funds
4 on the owner's balance sheet to LivFree; correct?

5 A Correct.

6 Q Let's go back to Exhibit 20 real quick. It'll be on
7 page 9 again.

8 A Okay. I'm there.

9 Q On page 9?

10 A Yes.

11 Q Middle of the second-to-last paragraph says, "If a
12 license is granted, the anticipated January 1st, 2019, or
13 earlier reopening of 4850 West Sunset Road is forecasted to
14 produce -- is forecast to produce forecasted 2019 revenue is
15 \$19,868,676 of total taxable sales." Did I read that
16 correctly?

17 A Yes, you did.

18 Q Okay. So the forecasted opening date for that
19 facility may be January 1st, 2019; correct?

20 A Yes.

21 Q Let's go back to the budget information on
22 DOTMM1112.

23 A Okay. I'm there.

24 Q Are you there? Now let's go to the next page. We
25 haven't looked at that. DOTMM1113. What year is that budget

1 forecast for?

2 A 2019.

3 Q Okay. And we've already seen from the previous page
4 -- we can't tell. It says, "previously operating," so it may
5 be closed. What money, if any, can we tell from this page
6 that MM is spending on rent, for example, for that facility
7 prior to 2019? Can we tell?

8 A No, we can't. It's not one of the line items.

9 Q Now, no line items for 2018; correct?

10 A Correct.

11 Q So we don't know if they're spending any money on
12 maintenance.

13 A Correct.

14 Q We don't know if they're spending any money on
15 restoring equipment, we don't know if they're spending any
16 money on furniture, for example.

17 A Correct.

18 Q Now, I'll tell you from looking at page 9 that MM
19 represents this facility's in turn-key condition; correct?

20 A Yes.

21 Q So I guess we just take their word for it?

22 A The evaluators weren't trained to do that.

23 Q They're weighing the evidence in front of them based
24 upon the application; correct?

25 A Correct.

1 Q This facility may or may not have been closed for at
2 least three months prior to the anticipated opening date of
3 2019?

4 A Correct.

5 Q And we're unsure about its physical condition,
6 because we don't know the date of the pictures that were
7 provided; correct?

8 A Correct.

9 Q My friend Mr. Parker asked you about how could
10 Manpower possibly grade operating expenses if they didn't have
11 a baseline for what it would cost to operate a marijuana
12 establishment. Do you remember that?

13 A Yes, I do.

14 Q And he said that a 5,000-square-foot building cost
15 \$3.5 million per year to operate. Do you remember that?

16 A I think I recall something similar to that, yes.

17 Q Okay. Was that in Humboldt County, or was that
18 somewhere else?

19 A I don't think he specified.

20 Q Mineral County? Lyon County? How about city of
21 Sparks?

22 A I don't think so.

23 Q That include fixed costs, or variable costs?

24 A I don't know.

25 Q Depreciation on equipment. Did Mr. Parker's

1 estimate include that?

2 A I don't know.

3 Q Did it include costs to pay off a line of credit?

4 A Again, I don't know.

5 Q How about interest payments on a construction loan?

6 A I don't know.

7 Q Was Mr. Parker's estimate based upon a rental, or
8 that they -- or that applicant owned the building?

9 A I don't know.

10 Q In order to have a baseline you'd have to know those
11 assumptions; right? You'd have to know it for every single
12 county in the state of Nevada; correct?

13 A Correct.

14 Q Not very realistic, is it?

15 A Not in this scenario, no, it was not.

16 Q Mr. Parker's estimate include funding for tenant
17 improvements that year he shows to \$3.5 million?

18 A I don't know.

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

20 THE COURT: Thank you.

21 Mr. Koch.

22 And that was two hours including our break. It goes
23 back to my doubling whatever lawyers told me rule of thumb.

24 MR. KOCH: Well, I already knew I wasn't getting
25 M&Ms, so -- he's been here so long the Judge has had a

1 haircut, Mr. Shevorski has, and maybe Mr. Parker. I don't
2 know if Mr. Parker has or not. It's been a while.

3 CROSS-EXAMINATION

4 BY MR. KOCH:

5 Q Mr. Gilbert, you've been here a while. You've had a
6 chance to reflect on the process, look at a lot of documents.
7 And looking back on everything, do you think the Department
8 did a good job in the licensing application process here?

9 A Yes, I do.

10 Q Did they do a perfect job?

11 A Close to it.

12 Q Were there some things that you would have changed
13 if you were doing it again starting today?

14 A There's always room for improvements. You learn
15 from processes.

16 Q In fact, you were part of the process in 2014 for
17 medical; right?

18 A Yes.

19 Q And in 2018 when the licensing application process
20 came up the Department did things a little differently than
21 the Department of Public Health -- Behavioral Health did; is
22 that right?

23 A Yes, we did.

24 Q Learned maybe a little bit from 2014?

25 A Yes, we did.

1 Q And some changes were made?

2 A Yes.

3 Q Do you think if different people were employed by
4 the Department of Taxation in 2018 there could have been
5 different decisions made, for example, with the number of
6 points that were allocated to each category?

7 A Can you be -- clarify a little bit for me.

8 Q I think you said that you, Jorge Pupo, and Kara
9 Cronkhite worked and decisions were made with respect to the
10 number of points that were allocated to let's say diversity.
11 Those decisions were made within the Department; is that
12 right?

13 A That's correct.

14 Q Let's say if 12 different individuals were there
15 making those decisions. Do you think there could have been
16 different decisions made with respect to the number of points
17 allocated to that?

18 A Potentially.

19 Q For example, you know, Mr. Parker spent a lot of
20 time talking about diversity, and his clients have something
21 that's important to them. If Mr. Parker were on the
22 Department, perhaps he would have allocated 40 or 50 points to
23 diversity. That have been a possibility?

24 A Could have been. It wasn't my decision ultimately,
25 but, yes, that could have been.

1 Q And Mr. Gentile I think has argued that diversity
2 [unintelligible] isn't even related at all to the operation.
3 Maybe he would have given 1 point. Could that have been a
4 possibility?

5 A It could have been a possibility.

6 Q There were no points stated in the initiative for
7 each category, were there?

8 A No, there were not.

9 Q So there may have been a difference of opinion,
10 depending upon who was working at the Department at the time?

11 A Yes.

12 Q Do you think the decisions that were made were
13 reasonable based on your review and observation?

14 A I do.

15 Q Let me ask you for a second about these Manpower --
16 we keep calling them Manpower employees. I think -- my
17 understanding is, and correct me if I'm wrong, the Department
18 went out and listed job openings and sought applicants for
19 those job openings; is that right?

20 A We didn't post job openings, but we did recruit
21 based on the skills and experience that we needed.

22 Q And those who the Department interviewed or
23 recruited, do you think that they had the qualifications the
24 Department was looking for?

25 A Absolutely, yes.

1 Q Registration with Manpower, that was just a
2 procedural process; is that right?

3 A Yeah, that's correct. So the State of Nevada has a
4 contract with Manpower, and that's a way for -- actually to
5 pay salaries and hourly wages.

6 Q Do you know if any of these evaluators went back to
7 work for Manpower after they got done evaluating?

8 A I don't know. We still do have -- yes, they did.
9 We have one working for us right now.

10 Q Working for the Department?

11 A Yes.

12 Q And being paid through Manpower?

13 A Yes.

14 Q Very good. Now, the qualifications that you looked
15 for in these evaluators, was preference in type of music one
16 of those qualifications?

17 A No, it wasn't.

18 Q And if an evaluator liked to play country music,
19 would that have disqualified him from being an evaluator?

20 A No.

21 Q Would classical music, any other types of music?

22 A No.

23 Q Irrelevant?

24 A That was irrelevant during the interview process.

25 Q Based on your observation of these employees that

1 were hired through Manpower did you believe them to be
2 competent?

3 A Yes.

4 Q Did you have the chance to interact with them?

5 A I did, yes.

6 Q You weren't observing their evaluation or scoring;
7 is that right?

8 A I did not do that, no.

9 Q But you were able to speak with them?

10 A Yes.

11 Q They seem intelligent to you?

12 A Very much so.

13 Q You had a chance to interact with them before the
14 scoring started?

15 A Yes.

16 Q And what about after the scoring was completed?
17 Also then?

18 A Yes.

19 Q And your observation of those employees both before
20 and after that they were competent to perform the functions
21 they were hired to do?

22 A Yes.

23 Q Has anything that you've seen in the documents, the
24 questions that you've been asked changed your opinion of the
25 competence of those employees?

1 A No.

2 Q Let's look at Exhibit 303. I'm not sure which
3 binder that's in.

4 (Pause in the proceedings)

5 BY MR. KOCH:

6 Q Let's just go off --

7 A I can go off the screen.

8 Q We'll go off the screen. Yeah. Why don't you -- if
9 you've got it you there it might be a little bit easier than
10 trying to zoom around.

11 Tell me when you're there. You got 303?

12 A Yeah, I am.

13 Q All right. So what is this sheet?

14 A It's a tracker that we had to track the progress.

15 Q And that was used by the Department for every
16 application that was received?

17 A Yes.

18 Q Okay. You talked I think a little bit about that.
19 I want to ask just a little bit more. Was there a process for
20 when the application was received -- the Judge has asked a few
21 questions about checking it for completeness. Was that a part
22 of this tracking sheet?

23 A The steps that you see -- well, each step would be a
24 step in the completion.

25 Q Okay. Let's just walk through a few of those. So,

1 for example, Blossom Group is the very top entity there. I
2 don't think Blossom Group is a part of this case. But the
3 first column there says, "Address." This says "TBD." Do you
4 see that?

5 A Yes.

6 Q So they didn't have an address listed; is that
7 right?

8 A That's correct.

9 Q It does have a county. It's in very small type, so
10 let me know if you have a hard time reading it. County and
11 location jurisdiction, those are both listed?

12 A Yes.

13 Q Those would be listed on the application when it's
14 received?

15 A Yes, they would have.

16 Q And it has the arrival date; is that right?

17 A Yes.

18 Q Then it says, "App fee confirmed." Do you see that?

19 A Yes.

20 Q There's four items there for Blossom. One is black,
21 and one is in red. Do you know why some are in red and some
22 are in black?

23 A I don't.

24 Q Okay. And then on the top of that section it says,
25 "Michelle or Marilyn complete yellow columns." Who is

1 Michelle, and who is Marilyn?

2 A Michelle is a Department of Taxation administrative
3 assistant in the Las Vegas office, and Marilyn is the same
4 position in Carson City.

5 Q Okay. And those individuals would complete those
6 columns that are listed below there?

7 A Yes.

8 Q The next section that's in purple says Diane
9 completes? Is that right?

10 A Yes, that's Diane.

11 Q Okay. What's Diane's last name?

12 A O'Connor.

13 Q Is she a Department employee?

14 A Yes, she is.

15 Q And Diane completes this fourth column. The first
16 one says "Ownership confirmed." Do you know what that means?

17 A Yes. So she was part of the process of confirming
18 the ownership in the application matched what the Department
19 had on record.

20 Q Okay. Let's look at a few examples there. Under
21 Blossom it says "Yes." So she would have confirmed that with
22 what the Department had?

23 A Yes.

24 Q Going below, Greenway is the next one. It says,
25 "Pending CHOW matches." Is that what it says?

1 A Yes. So that would have been, like I described
2 earlier, if we had a transfer of ownership or a CHOW in the
3 house, then we would compare that.

4 Q Okay. And then -- so there could have been a
5 complete match, there could have been something pending. That
6 would have been checked by Diane when received?

7 A Yes.

8 Q Then Nevada Organic Remedies, it says, "Yes per
9 Jeannine." Do you know what that means?

10 A So Jeannine is another Program Officer III who
11 manages the transfer of ownership process, so she was involved
12 in the record verifications.

13 Q All right. And the next one I want to ask you,
14 Green Leaf Farms Holdings. It says, "CHOW does not match
15 app." What does that mean?

16 A That would mean that we had to investigate a little
17 bit more to see why the transfer of ownership didn't match the
18 application.

19 Q Well, you said transfer of ownership. Was there a
20 transfer of -- is a CHOW a transfer, or is that the existing
21 list?

22 A Yeah. Sorry. So the CHOW -- a CHOW is a transfer
23 of ownership. Same thing.

24 Q Okay. So each -- for each of the items it says CHOW
25 there was something that was pending with the Department

1 perhaps at that time?

2 A Yes.

3 Q Then it says under "Diane completes," there's
4 initial, looks like she initialed several of those. Date
5 delivered to IDAA. Do you know what that means?

6 A Yes. That would be when the application was
7 confirmed and available to be given to the evaluators.

8 Q Do you know what AA stands for?

9 A Administrative assistants.

10 Q Okay. And the next column says, "Date delivered to
11 non-IDAA." That's I guess the administrative assistant for
12 non-ID?

13 A Yes.

14 Q Two different people?

15 A Yes.

16 Q All right. And then the last three columns that
17 appear to be filled out there, "Contract AAs complete." What
18 does that mean?

19 A That's the date that they -- you know, I'm -- that's
20 the date I'm assuming that would be that they were given to
21 the ID team or the non-ID team.

22 Q Okay. And the contract dates, were those the
23 administrative assistants hired through Manpower?

24 A Yes.

25 Q And that's the only part of this sheet, it looks

1 like, that the contract administrative assistants completed.

2 Is that right?

3 A Yes.

4 Q And they track the dates that those were -- date
5 given to evaluation teams, the date the ID completed its
6 scoring; is that right?

7 A Yeah, that's the scoring -- when the scoring was
8 complete, it looks like.

9 Q And then the date the non-ID team completed its
10 scoring?

11 A Yes.

12 Q So in the very first example there it was given to
13 the evaluation team on 9/14, the ID team completed on 9/18,
14 and then the completion date -- or non-ID team completion date
15 was 9/28; is that right?

16 A Yes.

17 Q Okay. And the rest, we go down here, there appear
18 to be different dates for the ID team completion and the non-
19 ID team completion. Does that surprise you that there's
20 different dates for those?

21 A No, it doesn't, because they were worked in --
22 separately, in separate groups, separate offices. And the ID
23 might have been slower than the non-ID, so they were never in
24 unison.

25 Q Okay. Why don't you turn to -- if you'd turn to the

1 third page of that document, please, DOT41837. And there's
2 several red items there under "Ownership confirmed." Top one
3 says, "Euphoria does not match pending CHOW." I think you've
4 explained that. There's a transfer and the applicant doesn't
5 match that; is that right?

6 A Yes.

7 Q In the middle of the page there's a few that says
8 "Okay per JW 10/9." Do you know what that means?

9 A That they confirmed the match.

10 Q What is JW?

11 A That must be Janine Warner.

12 Q Okay.

13 A She had a hyphenated last name, Sher-Warner.

14 Q So that was a Department of Taxation employee?

15 A Yes.

16 Q And you think that this sheet that was prepared and
17 completed by the Department was helpful in completing the
18 process of scoring the applications?

19 A Yeah, it was. It helped us -- helped them keep
20 track of everything that was being handed out and completed.

21 Q There's a lot of applications.

22 A There was; 462.

23 Q You talked a fair amount about this -- there was
24 questions about the tie breaker process, and if we can turn to
25 Exhibit 2003 --

1 MR. KOCH: And maybe just pull that out, Brian.

2 BY MR. KOCH:

3 Q -- page 2279. And Exhibit 2003 is part of the
4 training material. I just want to ask you about one page
5 here. All right. Was this page part of the training
6 materials, if you recall?

7 A Yes.

8 Q Okay. And it describes the tie breaker process
9 being initiated if the last spot available for a provisional
10 certificate has a tied score. Were there any last spots that
11 had a tie score that you're aware of?

12 A There wasn't.

13 Q So there's no tie breaker to even apply?

14 A No.

15 Q And so the next bullet point there, "The applicant
16 with the highest score for their proposed organizational
17 structure will be awarded a provisional certificate," that was
18 never even needed in this process; is that right?

19 A No, it wasn't.

20 Q The [unintelligible] that was part of the
21 organizational structure?

22 A Yes, part of that component.

23 Q Also on the materials -- and for the sake of time I
24 don't think I'll pull it up. But there were some questions
25 there about confidentiality or some instructions about

1 confidentiality, and those who were being trained were told
2 that if they're contacted by anyone in the industry during the
3 application process that they should come to you and let you
4 know about that. Do you remember that instruction?

5 A Yes, I do.

6 Q Did anyone, the evaluators or anyone else ever come
7 to you and say, hey, somebody's contacting me, I think it's
8 improper, and they let you know about that?

9 A No, they did not.

10 Q You were not aware of any contacts from anyone in
11 the industry directly to an evaluator; is that right?

12 A I'm not aware of any of that.

13 Q What about with anyone else that was part of the
14 process that you were notified might be improper?

15 A No.

16 Q All right. Secretary of State. We've had all sorts
17 of questions about the Secretary of State versus the
18 Department's ownership list. And you said that the Department
19 doesn't go look at the Secretary of State's officers,
20 directors, board members; is that right?

21 A That's right.

22 Q Do you know if the Secretary of State's list is any
23 more accurate or inaccurate than the Department's ownership
24 list or board, officers, owners list?

25 A I don't. I can't speak to Secretary of State's

1 accuracy.

2 Q Do you know how hard it is for an entity to change
3 the list of officers or board members that are listed with the
4 Secretary of State?

5 A I've never done it, but from what I've heard it's
6 fairly easy.

7 Q Would it surprise you if I could get on, for
8 example, my law firm, click on there, and add the Las Vegas
9 Aces? I could have the front line of the Las Vegas Aces are
10 officers of my company today. That surprise you?

11 A It wouldn't based on what I've heard.

12 Q The Aces are great. I could add Mr. Parker on, I
13 could add anybody I wanted to. I would be attesting under
14 penalty of perjury that's an accurate statement, but do you
15 know if the Secretary of State actually does a background
16 check or checks to make sure that those individuals are
17 actually officers of the company?

18 A I don't -- I don't know what they do.

19 Q Mr. Miller, I told him maybe we'll call him as an
20 expert witness. He knows about this process, but I don't
21 think the Secretary of State actually checks to see if those
22 officers are actually officers. Would that surprise you, that
23 they don't actually check that?

24 A It wouldn't surprise me based on what I've heard.

25 Q And let me -- let me show you one thing. I guess

1 let's go to Exhibit 5040. This is -- this is the Nevada
2 Wellness Secretary of State.

3 THE CLERK: Proposed.

4 MR. KOCH (Pauses in the Proposed Exhibit 5040).

5 MR. PARKER: No objection, Your Honor.

6 THE COURT: Be admitted.

7 (Defendants' Exhibit 5040 admitted)

8 BY MR. KOCH:

9 Q All right. Do you have 5040 in front of you there?
10 All right. See that? That's the Secretary of State printout
11 for Nevada Wellness Center LLC. See that?

12 A Yes, I do.

13 Q And can you tell me who the officers who are listed
14 there bottom of that page.

15 A I see a Mr. Frank Hawkins and a Mr. Andre Rhodes.

16 Q Okay. So there's two officers listed there; is that
17 right?

18 A Yes.

19 Q Okay. Now, we can keep that open. Let's turn to
20 Exhibit 5023. And 5023 is the current ownership list that the
21 Department has. And --

22 THE CLERK: Proposed.

23 MR. KOCH: That was admitted.

24 THE CLERK: Oh. Sorry. It's admitted.

25 //

1 BY MR. KOCH:

2 Q Okay. So 5023 -- we don't have Bates numbers I
3 think on this page, but we're going to go alphabetically to
4 Nevada Wellness, which is directly after Nevada Organic
5 Remedies about halfway through this set of documents.

6 MR. KOCH: Can you find that, Brian?

7 BY MR. KOCH:

8 Q Okay. RD009 is Nevada Wellness Center. You see
9 that?

10 A Yes.

11 Q Okay. And this is the Department's list of current
12 owners and officers; is that right?

13 A Yes. It looks -- appears to be the one left side.

14 Q Okay. RD009 is for Nevada Wellness Center's retail
15 dispensary. You see that?

16 A Yes.

17 Q And if you look, there are three individuals listed
18 there. Can you tell me who those individuals are.

19 A Frank Hawkins, Luther Mack, and Andre Rhodes.

20 Q And what is the designation for each of those
21 individuals to the right of the names?

22 A They're owner-officers.

23 Q Okay. And we saw Mr. Hawkins and Mr. Rhodes listed
24 with the Secretary of State. Mr. Mack is not listed there.
25 Do you have a problem with that, that the Department has a

1 different list than the Secretary of State has?

2 A No, we wouldn't.

3 Q Do you know if Mr. Mack is in fact an officer of the
4 company?

5 A Personally I don't. I don't know.

6 Q Did the Department trust the representation that
7 Nevada Wellness Center that Mr. Mack was an officer of the
8 company?

9 A Yes. We would have compared it to what we have on
10 record.

11 Q And that Mr. Mack was an owner of the company, did
12 you trust that representation?

13 A Yes.

14 Q Did you ever go out and check and look for a
15 purchase and sale agreement from Mr. Mack buying part of the
16 company to make sure that he was an owner?

17 A No, we didn't, but --

18 Q Did you ask for proof in any way other than the
19 representation that Nevada Wellness Center made that Mr. Mack
20 was an owner and officer of the company?

21 A No.

22 Q So the Secretary of State listing was not something
23 that you checked and then called Nevada Wellness Center and
24 said, hey, what's this other guy doing on there?

25 A We did not do that.

1 Q And do you believe that Nevada Wellness Center did
2 anything improper by including those three individuals as
3 owners and officers?

4 A I don't think they did.

5 Q Look at one more. Let's go to Exhibit 20, and we're
6 going to look at pages 62 and 63, Bates Number 62, 63.

7 MR. KOCH: All right. Exhibit 20 has been admitted,
8 I believe. Is that right?

9 THE CLERK: It is.

10 BY MR. KOCH:

11 Q Okay. So Exhibit 20 is part of MM Development's
12 application. This appears to be a Secretary of State listing
13 from March 14th, 2018. Do you see that?

14 A Yes.

15 Q And it states it's for the period of March 2018
16 through March 2019; is that right?

17 A Yes.

18 Q If you look at the bottom of that page, who are the
19 individuals listed there as officers, directors of the
20 company?

21 A Robert Groesbeck.

22 Q Okay. Let's go to the next page. I think there's
23 one more individual listed. There's one more there; right?

24 A Yes.

25 Q All right. And it's Larry Scheffler?

1 A Yes.

2 Q Okay. So there's two individuals listed with the
3 Secretary of State in March 2018; is that right?

4 A Yes.

5 (Pause in the proceedings)

6 MR. KOCH: Move to admitted Exhibit 5039. I don't
7 think there's an objection.

8 MR. KEMP: No objection, Your Honor.

9 THE COURT: Any objection? Be admitted.

10 (Defendants' Exhibit 5039 admitted)

11 BY MR. KOCH:

12 Q All right. 5039, Mr. Gilbert, do you have that?

13 A I see it on the screen.

14 Q Okay. Exhibit 5039 is a Secretary of State listing
15 dated August 28th, 2018. Do you see that date on the top?

16 A Yes.

17 Q And this is for the same period, March 2018 through
18 March 2019. You see that?

19 A Yes, I do.

20 Q Okay. And on the bottom of that page are there
21 different individuals than you saw in the previous list?

22 A Yes, there is.

23 Q Who's different there that you haven't seen before?

24 MR. KOCH: Let's try on the bottom of page 1, Brian.

25 THE WITNESS: William Vargas, Layton Koeller.

1 BY MR. KOCH:

2 Q Okay. Go to page 2.

3 A Adrian O'Neal.

4 Q All right. I think those are the three that I saw
5 that were listed there. Now, this was -- this additional list
6 was filed about 10 days before the applications are due to the
7 Department of Taxation. Did the Department have any problem
8 with applicants changing their boards prior to the application
9 time period?

10 A No.

11 Q Did the Department have the requirement of tenure
12 that an individual had to be on the board prior to being
13 listed on the application?

14 A No, there was not.

15 Q And the fact that these individuals listed here, Mr.
16 Koeller, Mr. Vargas, and Ms. O'Neal had not been part of the
17 list before, the Department didn't have any issue with that,
18 did it?

19 A No.

20 Q Mr. Vargas is listed as Hispanic, I believe, and Ms.
21 O'Neal is listed as an African-American female. Did the
22 Department have any problem with a company adding individuals
23 like that whom they count for diversity to their board prior
24 to the application process?

25 A No.

1 Q If an applicant added individuals the day before
2 they submitted the application, would the Department have a
3 problem with that?

4 A No. As long as it's listed on Attachment C.

5 Q As long as that individual is listed. That's what
6 the Department is looking for.

7 A Right.

8 Q And would the Department perform a background check
9 on each individual that was provided to the Department as part
10 of the application?

11 A Yes.

12 Q In reality, if -- I think there's some testimony
13 about this. If the State or the Department or whoever is
14 trying to increase diversity and the world of applicants that
15 could file an application was defined as those who already had
16 a medical marijuana certificate, isn't it true that the only
17 way that diversity potentially could be increased would be by
18 adding board members, officers, directors, owners to the
19 existing entities that were applying?

20 A Yes.

21 Q So MM didn't do anything wrong by adding those
22 individuals, did it?

23 A They didn't.

24 Q And the fact that -- let's go to Exhibit 5022,
25 please. In fact, on MM's current Website it does not show Ms.

1 O'Neal as part of its team or its board. Does the Department
2 have any problem with that?

3 A No.

4 Q The Department didn't go out and start looking at
5 Websites and performing investigations into what was
6 represented other than completing a background check; is that
7 right?

8 A Right. And what was provided in the application.

9 Q Right. And so you trusted what the applicants
10 submitted; correct?

11 A Yes.

12 Q And trusted them to tell the truth; is that right?

13 A Yes.

14 Q And you relied upon them?

15 A Yes.

16 Q And did you think that was a reasonable thing to do
17 for the Department?

18 A I do.

19 Q Did you go out and conduct any interviews of these
20 individuals to see if they were qualified to be a board
21 member?

22 A No, we did not.

23 Q What if a company listed let's say 10 vice
24 presidents of operations as officers and described their
25 duties there? Would the Department go back and tell that

1 applicant that they could not list that person as an officer?

2 A No, we would not.

3 Q As long as they provide a description of that
4 officer's duties and explain what they would do, would the
5 Department trust that representation?

6 A Yes. It was the narrative that they provided.

7 Q And when it came to races and ethnicities if someone
8 wrote Caucasian as their race, did the Department go out and
9 try to verify that?

10 A No, we did not.

11 Q And did the Department perform any DNA tests?

12 A No.

13 Q Did the Department ask for any family trees or
14 genealogies?

15 A No.

16 Q What if someone wrote "African-American"? Would the
17 Department go out and test that?

18 A We would not.

19 Q Same thing, no further testing other than what the
20 applicant put on the application?

21 A That's correct.

22 Q What if someone were 50 percent Asian and 50 percent
23 Caucasian? Do you know if that would count for diversity?

24 A If they marked Asian on Attachment C, it would.

25 Q And if someone were let's say 25 percent Asian and

1 75 percent Caucasian and they wrote down Asian, would the
2 Department try to go in and evaluate those percentages?

3 A No, we would not.

4 Q Let's go to Exhibit 21, page 1466. Do you have
5 Exhibit 21 up there?

6 A There is nothing. I have it over here somewhere.

7 MR. KOCH: May I approach?

8 MR. SHEVORSKI: He should have 21 up there.

9 (Pause in the proceedings)

10 BY MR. KOCH:

11 Q All right. We can go to 1466 in this book. This is
12 LivFree's application that we looked at earlier. Okay. And
13 1466, we can go through the whole thing, but I just want to
14 look at this one as an example to ask what the Department's
15 interpretation was.

16 This is Tia Dietz or Dietz, I'm not sure how she
17 pronounces it, and she is listed as a board member for
18 LivFree; is that right?

19 A Yes.

20 Q Okay. She's female, so that automatically counted
21 for diversity; correct?

22 A Correct.

23 Q I guess you don't know whether she's female. She
24 says she's female, and we trust her on that; is that right?

25 A Yes.

1 Q The race says white, Asian, and ethnicity Caucasian,
2 Korean. Do you know what percentage, what balance there was
3 between those ethnicities or races?

4 A I don't. Not off of this.

5 Q If Ms. Dietz came in and she had blonde hair and
6 blue eyes, would the Department say, well, we're going to
7 follow up and make some further checks on this because we're
8 not quite sure whether this representation's correct?

9 A No, we wouldn't.

10 Q The Department ask for pictures?

11 A No.

12 Q So you completely trust what the applicants put on
13 there; is that right?

14 A Yes.

15 Q You thought that was reasonable?

16 A We did.

17 Q We looked earlier at I think Mr. Parker asked you
18 about an individual with the name Flintie. That was in
19 Exhibit 37A, page 1741. I don't want to take the time to turn
20 to it, but his first name was Flintie. Based on that first
21 name do you have any idea whether that person is male or
22 female?

23 A I didn't.

24 Q Yeah. And Mr. Parker asked you, look at the names,
25 some are obvious maybe, Barbara, Kathy, whatever there may be.

1 Some may not be so obvious; is that right?

2 A Correct.

3 Q Did the Department make any judgment calls based
4 upon a person's name whether they're actually male or female?

5 A No. We went off the information provided in
6 Attachment C.

7 Q If the Department wanted to go out and investigate
8 every applicant, every officer, every board member, did the
9 Department have the resources to do so?

10 A No.

11 Q How many employees did the Department have in the
12 marijuana division or group?

13 A It's 44.

14 Q And if you sent all those people out to score all
15 these applications, do you have any estimate how long that
16 would take?

17 A I don't.

18 Q Longer than 90 days?

19 A Oh, absolutely.

20 Q Fair to say that once there's a decision made to
21 score diversity there could be some gaming of the system, but
22 the Department has to just rely upon what's provided in order
23 to complete its process?

24 A Yes. And they attested to the information provided.

25 Q And did diversity change any other scores in the

1 application?

2 A I'm sorry. Can you --

3 Q So diversity got 20 points; is that right?

4 A That's right.

5 Q And let's say an applicant got 20 points because
6 they had hundred percent diversity, hundred percent owners
7 that we're female or minority in there listed applicants. Is
8 that -- that would give you 20 points; is that right?

9 A Yes.

10 Q Did that applicant after they got the 20 points for
11 diversity get any further consideration or benefit for the
12 application let's say on the financial side? Because they had
13 high diversity did they get any sort of preference based upon
14 financial?

15 A No. Not based on the diversity.

16 Q What about organizational structure?

17 A No.

18 Q Were there any other categories that were affected
19 because someone's diversity score was high or low?

20 A There wasn't.

21 Q So an applicant had to not only have enough
22 diversity points, but they had to have enough other points to
23 qualify to receive a license; is that right?

24 A That's correct.

25 Q And we could have, I suppose, given a thousand

1 points for diversity and made that the sole characteristic
2 with everything else counting as 10 points. But that's not
3 the decision that was made, was it?

4 A No, it was not.

5 Q And the Department didn't score one set of
6 applicants, put one pile for 20 points for diversity and one
7 pile for 4 points for diversity and score those separately,
8 did it?

9 A No.

10 Q It was just one of the factors that was considered.

11 A It was.

12 Q What would happen if an individual were listed as an
13 officer of the company, let's say an African-American male is
14 listed as an officer of the company, that applicant received a
15 conditional license on December 5th, 2018, and on January 5th,
16 2019, that individual quits their job. Does the Department go
17 back and re-score that application?

18 A No.

19 Q So is there any requirement of tenure after the fact
20 for an applicant to have a board member, owner, or officer to
21 be diverse?

22 A There's -- no, there isn't to my knowledge.
23 Nothing.

24 Q For every person that was listed as an owner,
25 officer, or board member did the Department in fact conduct a

1 background check or submit that person for a background check?

2 A They submitted their own fingerprints, and we
3 conducted the background check.

4 Q And tell me, if the background check revealed that
5 that individual say was a criminal, was a drug peddler or
6 something, what would happen if that came up in the background
7 check?

8 A We would have addressed it at that point. It didn't
9 come up, but it would have been elevated up for the proper,
10 you know, discussion and potential ramifications.

11 Q Would -- if there were one officer of the company
12 that had a felony conviction for something, would that
13 applicant be disqualified?

14 A Yes.

15 Q And if that background check turned up that
16 conviction, the applicant would have been notified?

17 A Yes.

18 Q Let's suppose that one of the owners -- there's talk
19 about, you know, some owner out there may not have been
20 disclosed. Let's suppose an owner that is disclosed is --
21 goes back to his house and there's this Canadian Mafia boss --
22 we talked about the Canadian Mafia. I don't know why. I
23 don't even know if the Mafia exists in Canada, but let's
24 suppose it does, and let's suppose there's a Canadian --

25 THE COURT: How about we call them Canadian

1 organized crime.

2 BY MR. KOCH:

3 Q -- Canadian organized crime boss who's back at that
4 owner's house and is extorting that owner, requiring that
5 owner to give him all the money he gets from the company, to
6 vote how that Canadian crime boss wants him to vote, and has
7 effective ownership of that company. Would the Department
8 know about that individual?

9 A No, we wouldn't.

10 Q And it's possible, but they're not listed on the
11 application.

12 A They're not, right.

13 Q And the Department doesn't go out to that person's
14 house to see if that Canadian Mafia boss is sitting there with
15 a gun to the owner's head to see if somebody's there, and so
16 it's possible that somebody could theoretically get around
17 this background check; is that right?

18 A Theoretically. We hope that they don't, but
19 theoretically, yes.

20 Q And you believe that the Department's process for
21 completing those background checks in light of the
22 circumstances and the information that's received was
23 reasonable even though somebody could theoretically get around
24 that criminal background history?

25 A Yes. We do the state background check and the FBI.

1 Q All right. There's some talk about the community,
2 the relevant community and whether the jurisdiction or the
3 community has an effect. Now, I've seen, for example, in
4 Planet 13 the company, they sell a lot of marijuana. I think
5 they said the highest [unintelligible] seen a lot of their
6 taxicabs around advertising to different parts of the city.
7 Is the community as defined limited to that block that the
8 marijuana dispensary is located?

9 A No, it's not.

10 Q I think Planet 13 is actually right next to I think
11 like the Erotic Heritage Museum or something like that. Did
12 you look at that museum next door to see if Planet 13
13 affecting that Heritage Museum that was there?

14 A No.

15 Q Okay. What about somebody who's on the other side?
16 Do you look at those immediate neighbors? Was that in your
17 consideration of these locations?

18 A It wasn't.

19 Q The community, would that be broadly defined?

20 A Yes. I think so.

21 Q So the community -- if Planet 13 has a dispensary
22 that's sitting there on Desert Inn, Industrial Road down there
23 and has a lot of other neighbors that might be different types
24 of neighbors than somebody else has down the road, that
25 wouldn't necessarily be a consideration that was scored in the

1 applications or submitted in this case, would it?

2 A No, it wasn't.

3 Q And the fact that Planet 13 advertises all around
4 the city, that's not something that the Department would take
5 into account in scoring its application, would it?

6 A No.

7 Q Exhibit 5007. Can you turn to that Exhibit 5007.
8 We looked at it before. It's some of the tally sheets -- or
9 all the tally sheets, I think, for all the applicants. We've
10 seen this before. The first one is RD210 through 213. You
11 see that?

12 A Yes.

13 Q Okay. And Mr. Parker showed you several tally
14 sheets that all had the same points and the same time given by
15 each of the scorers. Is every tally sheet that you've looked
16 at, do all of them have the same points for all three scorers
17 and all of them had the same time for all three scorers?

18 A No. There's some differences.

19 Q So on this one, for example, for the I think it was
20 Blossom Group, if we look on the total score, it did pretty
21 miserably, frankly, 36, 37, 35. You see that?

22 A Yes.

23 Q Okay. And the scorers' time, how much time did they
24 give below?

25 A Total time 3 hours, 2.75, and 6.25.

1 Q That's a pretty wide range there.

2 A Yeah.

3 Q And I don't know what one scorer was doing or the
4 other, but they had different times; is that right?

5 A Yes.

6 Q And then if we look at the next page, RD214, I think
7 this is GreenWay. RD214, if we look at the total scores,
8 they're close, 57, 58, 55; right?

9 A Yes.

10 Q Not the same?

11 A No.

12 Q And the times listed below, now, these times they're
13 pretty close, 3 hours on the organizational, little variation
14 on financial, and same for tax; is that right?

15 A Yes.

16 Q Does it surprise you that these scorers got similar
17 times on scoring these categories?

18 A No, it doesn't surprise me.

19 Q And over time do you have any understanding or
20 expectation about the evaluators and their ability to score
21 these as far as the time that it took to score each
22 application?

23 A No, I don't.

24 Q You didn't participate in the timing at all; is that
25 right?

1 A No.

2 Q All right. And does it surprise you that some
3 applicants had a high number of hours on the scoring, for
4 example -- well, I'll just say the three hours we just looked
5 at versus one and a half with somebody else, does it surprise
6 you there's variation there?

7 A No. It depends comprehensive their application was.

8 Q All right. Were some of the applications -- do you
9 know how long some of the applications were?

10 A I know thousands of pages.

11 Q And were some less than thousands of pages?

12 A Yes.

13 Q Were some hundreds of pages?

14 A Yes.

15 Q And so there's a wide variety in the length of the
16 applications; is that right?

17 A Yes, there is.

18 Q Do you believe that a longer application would take
19 longer to score?

20 A I do. Because they need to go through the entire
21 thing.

22 Q Okay. All right. Mr. Gilbert, were you pressured
23 by any applicant to change any scores?

24 A No, I was not.

25 Q Are you aware of any bribes or payments that were

1 made to you or anyone at the Department to obtain a license?

2 A No.

3 Q Do you believe that you fulfilled your
4 responsibilities properly?

5 A Yes, I do.

6 Q Do you believe that everybody at the Department that
7 you had a chance to observe did a reasonable job to fulfill
8 their responsibilities and duties properly?

9 A Yes.

10 Q Do you believe that the standards that were listed
11 and the categories, the points, the criteria were applied, to
12 the best of your knowledge, to the scoring properly?

13 A Yes.

14 Q Do you believe that it was done impartially?

15 A It was not.

16 Q It was not done impartially?

17 A I'm sorry. I misunderstood the -- yes.

18 Q All right. Let me ask it without a negative. Was
19 there any partiality that you observed in the scoring process?

20 A No.

21 Q Okay. And there was also a call for the numerically
22 based scoring system to be applied. Did you -- do you believe
23 that the Department used a numerically based scoring system in
24 grading these applications?

25 A Yes.

1 Q Was there any subjectivity that did not involve a
2 numerically based system that you observed?

3 A Can you repeat that one.

4 Q Was there any other sort of subjective
5 qualification, like I think this is a really nice company,
6 that somehow affected the outcome other than what was actually
7 applied in the numerically based system?

8 A No. They followed that criteria.

9 Q And to the best of your knowledge the Department
10 followed the regulations and statutes that govern the process
11 that we're talking about today?

12 A Yes.

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

14 THE COURT: Mr. Kahn?

15 MR. KAHN: No questions.

16 THE COURT: Mr. Hone? Ms. Shell?

17 MS. SHELL: No, Your Honor.

18 THE COURT: Mr. Gutierrez?

19 MR. GUTIERREZ: No questions.

20 THE COURT: Mr. Graf?

21 MR. GRAF: Your Honor, I've only got like one
22 question, two questions.

23 THE COURT: Can you keep your voice up instead of
24 walking over Ms. Higgins.

25 MS. HIGGINS: No, he's okay.

1 THE COURT: Okay.

2 MS. HIGGINS: My foot is down right now, so he's
3 okay.

4 MR. GRAF: Exhibit 130, that's the exhibit, right?

5 THE CLERK: Yes.

6 CROSS-EXAMINATION

7 BY MR. GRAF:

8 Q Good afternoon, Mr. Gilbert. My name is Rusty Graf.
9 I represent Clear River in this action.

10 A Good afternoon.

11 Q Exhibit 130, do you recognize that document?

12 A Yes, I do.

13 Q What is it?

14 A That's the analysis that we did towards the end of
15 the evaluation process to look at owners, officers and board
16 members.

17 Q And who prepared this document?

18 A I don't recall.

19 Q Is it somebody at the Department of Taxation?

20 A It could have been one of the contractors.

21 Q This wasn't prepared by somebody at Clear River,
22 though, was it?

23 A No, it was not.

24 Q So the term prospective board member or prospective
25 officer, that was something that was filled in by somebody at

1 the Department of Taxation?

2 A Yes.

3 Q Okay. And then I forget if it was Mr. Shevorski or
4 Mr. Koch, but they went over NRS 453D.200, subpart 6, right?
5 NRS 453D.200, paragraph 6. It says there -- and what is this
6 section, Mr. Gilbert, as you understand it?

7 A The Department shall conduct a background check for
8 each prospective owner, officer and board member. So it would
9 be a State background check for criminal activity, as well as
10 an FBI.

11 Q So here the terms, owners, officers and board member
12 are used to describe individuals that are identified in the
13 application; correct?

14 A Yes.

15 Q And the term board of directors isn't utilized
16 within this statute anywhere, is it?

17 A Not that I can recall a board of directors, no.

18 Q The term directors isn't used anywhere, either, is
19 it?

20 A I don't think so.

21 Q Okay. Now, going back to our list, Exhibit 130, the
22 ones as to --

23 MR. GRAF: If you could blow up the Clear River
24 numbers. It just doesn't blow it up, does it? If I can
25 approach the screen, Your Honor?

1 THE COURT: You may.

2 BY MR. GRAF:

3 Q Mr. Gilbert, we also went over some exhibits that
4 showed that Mr. Black was identified as the owner -- only
5 owner and the applicant. Do you recall that?

6 A Yes.

7 Q Exhibit 37A.

8 A Yes.

9 Q And then there are several individuals that are
10 identified there as -- two as prospective board members,
11 Flintie Williams and Tisha Black. Do you have any reason as
12 you sit here today to believe that they don't sit as board
13 members on that company?

14 A No, I don't.

15 Q Have you been given any information by anybody, even
16 during the testimony of this entire proceeding, that that is
17 not accurate?

18 A No.

19 Q Then these other individuals, Mr. Twiddy, Mr.
20 Biorick (phonetic), Mr. -- excuse me, Ms. Hart, Ms. Biorick,
21 Hardin, DeGraff, Hyatt, Desharon (phonetic), Gentile -- I
22 don't think there's any relation -- and McBride, those
23 individuals, do you have any reason to believe that they're
24 not now and at the time of the application employees of Clear
25 River?

1 A No, I don't.

2 Q Okay. Various attorneys asked you some questions
3 about NRS 86. I'm just going to ask you one question. Did
4 anybody show you any statute that said an LLC cannot have a
5 board?

6 A No.

7 Q Did any of these individuals show you any statute
8 that said that you couldn't have an officer of an LLC as
9 opposed to a member or manager?

10 A Not that I can recall, no.

11 MR. GRAF: Okay. Nothing further.

12 THE COURT: Thank you.

13 Redirect.

14 REDIRECT EXAMINATION

15 BY MR. KEMP:

16 Q Good afternoon, Mr. Gilbert.

17 A Good afternoon.

18 Q You told me awhile back that LLCs don't have board
19 members or that's your understanding? Was that your testimony
20 before?

21 A I don't know.

22 Q Do you want me to read it to you?

23 A Please.

24 Q You're not intending to change that today, are you?

25 A No.

1 Q All right. Well, let's skip over that, then. With
2 regards to the questions that you were just asked about Clear
3 River, Clear River listed Flintie Ray Williams and Tisha Black
4 as advisory board members. Do you understand that?

5 A I'd have to look at the application.

6 Q Okay. Flintie Ray Williams is a former Rebel
7 basketball player. Are you aware of that?

8 A I'm not.

9 Q And Tisha Black is Mr. Black's daughter. Did you
10 know that?

11 A I didn't.

12 Q And by having Mr. Williams, an African-American, and
13 the daughter, they managed to raise their diversity points by
14 2 points, 2 full points?

15 MS. SHELL: Objection. Argumentative.

16 THE COURT: Overruled.

17 BY MR. KEMP:

18 Q Do you understand that? Mr. Parker went through
19 that witness.

20 A Yeah, I'd have to look at the listing.

21 Q Okay. And that made them winners instead of losers
22 in unincorporated Clark County?

23 A I don't know if that --

24 Q Would you agree with me --

25 MR. GRAF: Your Honor, incomplete hypothetical in

1 that the rest of the application was also evaluated.

2 MR. KEMP: Well, if we took away the --

3 THE COURT: Overruled, Mr. Graf.

4 MR. GRAF: I'll take -- [inaudible].

5 BY MR. KEMP:

6 Q If we take away the 2 points they got by listing
7 these two people as advisory board members, the 2 diversity
8 points, they would have come in 11th in Clark County as
9 opposed to 10th. Are you following me?

10 A Yeah. But that could have happened with other
11 segments.

12 Q And in your view that's not right for people to list
13 minorities or women as just advisory board members to get
14 diversity points, that's not what the Department expected;
15 right?

16 MR. GRAF: Object as to form. Argumentative as to
17 what's right and unright.

18 THE COURT: Overruled.

19 MR. GRAF: Thank you, Your Honor.

20 THE COURT: Overruled. It would be right and wrong,
21 not right and unright.

22 MR. GRAF: Right and unright.

23 BY MR. KEMP:

24 Q Okay. That's not what you expected, that people
25 would list advisory board members to get diversity points?

1 A We relied on the information that they supplied in
2 their application.

3 Q You relied upon, but you didn't expect people to be
4 listing people that really weren't officers or directors of
5 the companies in the legal sense, you didn't expect that to be
6 happening, did you?

7 MR. GRAF: Objection, Your Honor. Assumes facts not
8 in evidence and now he's trying to testify to this Court.

9 THE COURT: Overruled. I already asked the witness
10 if he knew what OOD meant.

11 MR. GRAF: Yeah. I agree.

12 THE COURT: Okay. I started that process.

13 MR. GRAF: Thank you.

14 THE WITNESS: Can you repeat the question, sir?
15 BY MR. KEMP:

16 Q Let's use Mr. Parker's example of the Las Vegas
17 Aces, okay. Fifteen women on the basketball team. All women.
18 You didn't expect people just to go out and find groups of
19 women or minorities and list them as advisory board members to
20 get diversity points?

21 MS. SHELL: I have to object again, Your Honor.
22 This is just -- this is very argumentative.

23 THE COURT: Overruled.

24 MS. SHELL: Thank you, Your Honor.

25 THE WITNESS: No. We expected their ownership to

1 match what we had on record or with transfer of ownership in
2 the house.

3 BY MR. KEMP:

4 Q You expected it to be officers, owners and employees
5 that were actually officers, owners and -- or excuse me, board
6 members; right?

7 A We relied on the information that they submitted and
8 we also had on record with the Department.

9 Q Okay. Mr. Koch discussed the Planet 13 location on
10 D.I. with regards to its community impact. Do you recall
11 those questions?

12 A Yes.

13 Q Would I be correct that community impact is not even
14 a factor for someone who's moving locations as opposed to a
15 new application process?

16 A Can you repeat that one?

17 Q That was a change of location from the Sunset
18 address to the D.I. address; correct?

19 A Right.

20 Q Community impact didn't have anything to do with
21 that, did it?

22 A That change of location --

23 Q Right.

24 A -- in 2018?

25 Q Right.

1 A No, that doesn't. Zoning is involved.

2 Q Community impact had absolutely nothing to do with
3 the D.I. location; right?

4 A It didn't have anything to do with our transfer of
5 location process.

6 Q Okay. Now, Mr. Koch suggested to you that Planet 13
7 somehow cheated on the diversity portion of their application
8 by adding a new set of persons as officers and directors in
9 the August of '18 Secretary of State filing. Do you recall
10 those questions?

11 A I recall the questions regarding Planet 13.

12 MR. KEMP: Okay. Let's pop up Exhibit 5039, please.

13 BY MR. KEMP:

14 Q Okay. Do you see those people that Mr. Koch went
15 through with you?

16 A Yes.

17 Q Okay. And how many people are listed there --
18 different people?

19 A Is it four? I didn't catch that last page.

20 Q Go to the last page.

21 A Is it five?

22 Q Altogether there's five? Five?

23 A I can't see that last page, the second page. Then
24 if you could go up. It appears to be five.

25 Q Okay. And of those, Mr. Koch suggested to you that

1 Mr. Vargas was Hispanic and Ms. O'Neill was an African-
2 American; correct?

3 A Yes.

4 Q So if you had done a diversity rating based on five
5 people and two of them were diverse, that would have been
6 what?

7 A 20 percent?

8 Q 40 percent?

9 A 40 percent.

10 Q That would have been how many out of 20? It would
11 have been 8?

12 A I'd have to look at that chart.

13 Q In fact, I think that would have been 12, actually.
14 Do you want to look at the actual --

15 A No, we don't have to.

16 Q Okay. But that's not what Planet 13 got, is it?
17 Planet 13 got a 4 on their diversity rating, didn't they?

18 A I don't know. I'd have to look at it.

19 Q Okay. Well, we've been through -- assume for me
20 that Planet 13 got a 4, not some kind of a higher figure based
21 on what Mr. Koch says they manipulated the system to get. Can
22 you explain to me why Planet 13 got a 4 instead of the higher
23 40 percent figure?

24 A I'd have to look at the application and actually
25 talk to the evaluators.

1 Q Well, the reason is because Planet 13, unlike Nevada
2 Organic Remedies, Planet 13 included all of their Canadian
3 officers and directors in their owners. Isn't that -- we went
4 through this before, do you recall?

5 A I'd have to go back through it.

6 Q Would you agree with me that we should have done it
7 the same way for everybody? In other words, if Planet 13
8 listed their officers and directors from their Canadian public
9 company and as a result got a relatively low diversity rating,
10 other applicants such as NOR that had publicly traded parent
11 companies should have also listed their officers and
12 directors. Would you agree with me on that?

13 A Again, I'd have to refer to the evaluators and see
14 what they evaluated and the criteria that they extracted out
15 of the application.

16 Q Well, isn't it true that the Department told Planet
17 13, gave them express direction that they should list the
18 officers and directors of their Canadian publicly owned
19 company?

20 A I'm not aware of that.

21 Q You're not aware of that?

22 A I don't recall, uh-uh.

23 Q And is there any reason that you can give me as to
24 why one Canadian public company should do it one way and
25 another should do it another way when we're trying to

1 determine diversity?

2 A No, I can't.

3 Q It should be the same; right?

4 A They should have supplied the information asked for
5 in the application.

6 Q Okay. Let's take a look at the questions Mr.
7 Shevorski asked you with regards to the MM building section,
8 okay. If you remember, the primary issue here was whether or
9 not Planet 13 should have -- and by that I mean MM Development
10 -- should have got a 20 because an existing building could
11 obviously be built in 12 months, or whether it was justifiable
12 that they got the 15.33 that they actually got. You remember
13 that being the primary issue; right? Right, when we discussed
14 this?

15 A When you and I did, yes.

16 Q Right. Now, Mr. Shevorski seems to be suggesting
17 that the graders gave a 15.33 because somehow they didn't
18 understand that that was a fully operational building at the
19 time they graded the application. First of all, was that your
20 understanding what he was trying to suggest to you?

21 A No.

22 Q Okay. Do you know why the graders gave Planet 13 a
23 15.33 instead of 20?

24 A I don't specifically. I don't know. I'd have to
25 refer to them and see what they pulled out of that floor plan.

1 Q So everything that you and Mr. Shevorski were
2 talking about was speculation on your part as to why they may
3 have graded it lower?

4 A I don't -- I don't agree with that.

5 MR. KEMP: Okay. Let's pop up Exhibit 20, page 9
6 again, please.

7 BY MR. KEMP:

8 Q Okay. In your review, Mr. Gilbert, does not this
9 description clearly state -- clearly state that the existing
10 building is going to be operational until November 1st?

11 A Can you repeat the question, sir?

12 Q It says specifically that the facility was fully
13 operational at the time the application was filed; correct?
14 Correct?

15 A It does say that.

16 Q Okay. And it says that they're going to continue in
17 operations until November 1st at that location; right? Is that
18 exactly what it says?

19 A It does say that in there.

20 Q And this application, the building section was
21 graded in October 2018, was it not?

22 A I'm not sure when -- what the date was.

23 MR. KEMP: Can you pop that up for him, please?

24 BY MR. KEMP:

25 Q What was the date it was graded, sir?

1 A Uh, can you scroll over? October.

2 Q So on the exact date that the building portion of
3 this application was graded, the applicant indicated and in
4 fact was operating a marijuana dispensary; correct?

5 A I don't know if they were open.

6 Q You don't know when your Department approved the
7 change of location from the Sunset to the D.I. location on
8 November 1st? You don't know --

9 A I don't know the date that they actually became
10 operational in their new facility.

11 Q Well, the date that it says on the application is
12 November 1st; correct?

13 A Okay.

14 Q You don't know one way or the other whether that's
15 the actual date?

16 A I don't.

17 Q Okay. So when you and Mr. Shevorski were speculating
18 that they got less than a 20 grade because the graders would
19 not have understood that the building was operational, that's
20 just what it was, it was speculation; right?

21 A No. I think they looked at the information that
22 was provided in the application, the floor plan and the
23 information provided.

24 Q They looked at the information provided that said
25 that there was an existing dispensary in operation on the date

1 that the application was graded and they determined the points
2 should be lower because it could not be built in 12 months.

3 Is that your testimony?

4 A No, it's not. And again, I'd have to refer to the
5 evaluators to get specific information on the scoring.

6 Q And you haven't done that?

7 A I haven't.

8 Q Okay. So this could have been a mistake. It
9 probably was a mistake, wasn't it?

10 A I don't think so. I mean, again, I didn't evaluate
11 it.

12 Q You think that it was a reasonable way for someone
13 to determine that an existing building that was in operation
14 on the date that the application was scored, you think there's
15 some way that someone could reasonably determine that that
16 operation couldn't be built in 12 months? You think so?

17 A Well, I'd have to look at the criteria that was
18 evaluated, speak to the evaluators and find out what
19 determination they made to give it 15.3 or whatever it was.

20 Q Okay. Let's talk about the factual representation
21 Mr. Shevorski made to the Court that the lease payments by
22 Planet 13 were not included in the application. Do you
23 remember that?

24 A Yes.

25 Q Okay. Do you know that to be true?

1 A I don't remember his question.

2 Q Did you go back to the application, the unredacted
3 portion, and look and see what was in it?

4 A No.

5 Q And so if I told you that Planet 13 had redacted the
6 actual lease payments in what was submitted to the Court
7 because that's proprietary information, but it had given you,
8 the Department, the actual lease payments for the grading, you
9 wouldn't dispute that, would you?

10 A I would have to go back and look and talk to the
11 evaluators.

12 Q You didn't do that, did you? You speculated with
13 Mr. Shevorski that those lease payments were not included.
14 That's what you did, didn't you?

15 MR. SHEVORSKI: Objection. Misstates testimony.

16 THE COURT: Overruled.

17 THE WITNESS: I mean, if they weren't in there they
18 wouldn't have been counted.

19 BY MR. KEMP:

20 Q If they were in there, the information was available
21 to the graders; right?

22 A Yes, it would have been.

23 Q Okay. And the reason you thought that was important
24 is you thought that somehow Planet 13 didn't provide a full
25 picture of their expenses? That was the suggestion that you

1 and Mr. Shevorski were attempting to make to the Court; right?

2 A Well, I would have to -- I'd have to talk to the
3 evaluators. I mean, because their score didn't reflect a full
4 point evaluation or criteria.

5 Q The 15.33 score didn't reflect the full 20 they
6 should have got; right?

7 A Well, and I can't speculate on the reason why.

8 Q Well, maybe the reason is what you and Mr. Shevorski
9 indicated, that these people just weren't smart enough to
10 determine that that building was in existence and operational
11 at the time the application was graded. That's the
12 explanation you and Mr. Shevorski have come up with. Can you
13 think of any other?

14 A I would have to look at the application. I don't --
15 I didn't evaluate the application.

16 Q We just looked at the application. You agreed with
17 me that it's clear that that building was in operation at the
18 time it was graded. We just looked at it.

19 MS. SHELL: Objection. Misstates testimony.

20 THE COURT: Overruled.

21 THE WITNESS: But all the other criteria, that was
22 evaluated along with that one little aspect of it.

23 BY MR. KEMP:

24 Q When the objective is to determine whether a
25 building can be built in 12 months, what more do you need than

1 that there's an existing building in operation at the time
2 that the application is graded? What other factor do you
3 need, sir?

4 A And again, I'd have to look at the application and
5 see what was put in it.

6 Q Here it is. Here it is.

7 THE COURT: And if you need him to move pages so you
8 can see more of the application, let us know.

9 THE WITNESS: Okay. Thank you, Your Honor.

10 THE COURT: Mr. Kemp, about how much longer do you
11 think you have?

12 MR. KEMP: I have one other area, Your Honor.

13 THE COURT: And when you say one other area, is it a
14 long area or --

15 MR. KEMP: It's a five minute area.

16 THE COURT: Okay. Do any of the other -- How long?

17 MR. GENTILE: It depends on the answers, but fifteen
18 minutes.

19 THE COURT: Okay.

20 THE WITNESS: Well, the information here indicates
21 that on or -- to be completed on or around November 1st.

22 BY MR. KEMP:

23 Q The information there says they're going to move to
24 the new location on or around November 1st?

25 A Correct.

1 Q If this was all you had, Mr. Gilbert, is there any
2 way you could determine that this building, this existing
3 building on Sunset Road would not be ready for a dispensary in
4 less than 12 months? Any way you could reasonably make that
5 conclusion?

6 A Not based on this information.

7 Q So they should have got the 20; right?

8 A Well, I can't say that. I'd have to look at -- I'd
9 have to look at the entire application.

10 Q We're looking at it. Okay, let me move to my next
11 area. You had some questions from counsel about the LivFree
12 financial situation?

13 A Yes.

14 Q And the fundamental problem here was LivFree got a
15 12.33 instead of a 40 on the financial section; right?

16 A Yes.

17 Q And if you recall, we went over it last time and
18 basically everybody got a 40, all the top -- the top ten in
19 Clark County got a 40, the top ten in Las Vegas. The top
20 twenty got a 40 in Clark County and Las Vegas. Do you
21 remember that?

22 A I don't recall specifically going over those.

23 Q Okay. Now, would I be correct that you do not know
24 why the graders didn't give the 40? You didn't ask them;
25 right?

1 A No, I didn't. I didn't challenge their scores.

2 Q So when you and Mr. Shevorski were nit-picking the
3 LivFree application, you were speculating, speculating as to
4 what may have been important and not important?

5 A I think what Mr. Shevorski presented was clear.

6 Q Okay. Well, the last time I was asking questions to
7 you, I asked you if cash was cash and you said yes. And I
8 asked you if there's anything more liquid than cash and you
9 said no. And I showed you the two million dollars in the
10 vault and you said that should have met the \$250,000
11 requirement. Do you remember that testimony?

12 A I think I do, yes.

13 Q Okay. You're not changing that, are you?

14 A No.

15 Q So if some grader didn't give LivFree full points
16 because of this \$250,000 liquid requirement, that's
17 inconsistent with what you would do; right?

18 A Well, again, you know, what they're looking for in
19 the application was proof that the money was there.

20 Q Okay. What did you want, pictures of the money in
21 the vault? What did you want?

22 A No.

23 MS. SHELL: Objection. Argumentative.

24 THE COURT: Overruled.

25 //

1 BY MR. KEMP:

2 Q Now, you and Mr. Shevorski talked a little bit about
3 a \$20,000 debit on LivFree. Remember that?

4 A Yes, I do.

5 Q And you do know that the owners of LivFree have --

6 MR. KEMP: Can I have the financial sheet, please?

7 BY MR. KEMP:

8 Q The financial net worth was well over 200 million;
9 right?

10 A I remember seeing that, yes.

11 Q Yeah. That was probably, I don't know, one of the
12 highest of all these applications; right?

13 A I don't know.

14 Q For someone who wasn't involved in a publicly traded
15 company, that was one of the highest, was it not?

16 A I wouldn't know. I didn't evaluate them.

17 Q Okay. Can you tell me specifically, do you have any
18 knowledge whatsoever as to why LivFree didn't get the 40
19 points? I'm not asking you to speculate. I'm asking if you
20 know why.

21 A I would have to look at the evaluation sheets and
22 talk to the evaluators.

23 Q Okay. Well, I've looked at the evaluation sheet and
24 I can't figure it out, but I haven't been able to talk to the
25 evaluators. Have you done that?

1 A I have not -- not specifically about certain scores.

2 Q And then, finally, there was some testimony that you
3 gave that the LivFree bank statement should have said LivFree
4 as opposed to --

5 THE COURT: Billco.

6 BY MR. KEMP:

7 Q Billco. Do you recall that testimony?

8 A Yes.

9 Q And I thought I went over this with you. Isn't it
10 true that a dispensary cannot open it's own financial account
11 in a bank? Isn't that true?

12 A I don't know if that's true or not, sir.

13 Q Have you heard that statement made?

14 A I have heard banking is very challenging.

15 Q Okay. Would I be correct that none of the 462
16 applicants filed bank statements in their own name showing
17 that they had liquid assets?

18 A I wouldn't know if that was the case or not.

19 Q But you think LivFree should be -- should lose
20 points because they used Billco instead of LivFree. That's
21 what you're saying?

22 A I think they were evaluated probably consistently
23 with everybody else that submitted the same type of
24 documentation.

25 Q So by that you mean they should have got 40 points?

1 A No. Or the other way around. It could have
2 happened the other way around for other applicants.

3 Q The other people should have got the 12.33; right?

4 A No.

5 Q Okay. Which way is it? LivFree gets more, others
6 get less?

7 A Can you repeat the question?

8 Q Okay. Assuming for the sake of argument that none
9 of the other 462 applications were able to produce bank
10 statements from federally-guaranteed banks showing that they
11 had two-fifty liquid, okay, assuming that to be the case and
12 that what they actually did was produce, just like LivFree
13 did, bank statements for other entities, they should have been
14 graded the same way; right?

15 A Yes.

16 Q So if they got 40 based on that presentation,
17 LivFree should have got the 40; right?

18 A It should have been done fair and consistently.

19 MR. KEMP: Thank you.

20 THE COURT: Thank you, sir.

21 Mr. Gentile, you have 16 minutes or less.

22 REDIRECT EXAMINATION

23 BY MR. GENTILE:

24 Q Mr. Gilbert, just to clarify something you said in
25 response, I think, to Mr. Shevorski or maybe Mr. Koch. Am I

1 to understand that the Department of Taxation, when burdened
2 with the duty and responsibility to create regulations did not
3 recruit people from Washington or Oregon or California or
4 Colorado that already had experience in doing so? Is that
5 what I'm to understand?

6 A Can you clarify that question?

7 Q Sure. Washington, that's a state, Oregon is right
8 below it, California is right below that. Colorado is a
9 little bit to our east, all right. They all had already in
10 place marijuana sales to the public, okay.

11 A Yes.

12 Q And they all had already developed those
13 regulations. Have you got that part so far?

14 A I do. Yes.

15 Q Okay. Am I to understand that the State of Nevada,
16 the Department of Taxation, the director, all of those people
17 up the chain down to you did not recruit experienced people
18 from those states to perform the function of the evaluators,
19 sir?

20 A We didn't recruit those states.

21 Q So the answer to my question is, yes, I'm right, you
22 didn't do it?

23 A We didn't recruit from those states you said.

24 Q All right. You went to Manpower?

25 A We recruited --

1 Q Sir, you went to Manpower; right?

2 A We processed the contractors through Manpower.

3 Q Because the State had a contract with Manpower?

4 A That's right.

5 Q Okay. All right, thank you. With regard to
6 charitable -- now, Mr. Shevorski, my pal, said that -- he
7 asked you a bunch of questions about whether security was
8 possibly something related to operations, whether economic
9 security was possibly something, human resources possibly
10 something. Now let's get down to these, finance possibly
11 something, marketing possibly something, business strategy
12 possibly something, physical operations possibly something,
13 inventory management possibly something or management of
14 people possibly something that might be related to the
15 operation of a marijuana facility. Remember those questions?

16 A Yes.

17 Q Okay. The Department of Taxation was not tasked
18 with giving business advice to the people that ultimately
19 would get licenses, am I right?

20 A You're right. Yes.

21 Q Okay. You were tasked with finding qualifications;
22 correct?

23 A Through the application process, yes.

24 Q And the qualifications had to be directly and
25 demonstrably related to the operation of a marijuana retail

1 establishment; right?

2 A Based on that citation of the statute.

3 Q Yeah, based on the law; right?

4 A Yeah.

5 Q Okay. Now, you would agree, sir, that the color of
6 a uniform that the people wear in a store might possibly be
7 related to the success of the operation, wouldn't you?

8 A I believe so.

9 Q And you would agree, sir, that if a frog had wings,
10 he might possibly not hit his butt on the ground; right?

11 MS. SHELL: I would object. I just don't know what
12 the objection is.

13 THE COURT: Sustained. Can we rephrase your
14 question? Because, remember, you've only got 12 minutes left.

15 BY MR. GENTILE:

16 Q Okay. Charitable contributions on these
17 applications -- you saw the applications, you helped design
18 the application; right?

19 A Yes.

20 Q It has a place to disclose charitable contributions?

21 A It had a category, yes.

22 Q Right. And the disclosure would indicate how much
23 was given and to whom; right?

24 A Yes.

25 Q Okay. Did you ever hear of the First Amendment?

1 A I've heard of it.

2 Q Okay. It has --

3 MS. SHELL: Objection as to relevance.

4 THE COURT: Overruled.

5 BY MR. GENTILE:

6 Q The Constitution of the United States is irrelevant,
7 according to one of the counsel in this case, but let's --

8 THE COURT: I know Ms. Shell thinks it's relevant.

9 MR. GENTILE: Okay.

10 THE COURT: Okay, keep going.

11 BY MR. GENTILE:

12 Q You've heard of separation of church and state?

13 A Yes.

14 Q Okay. Would you agree, sir, that if I would have
15 given 50,000 -- if I'm an applicant and I give \$50,000 or
16 \$100,000 to the Daughters of the Satanic Revolution, that that
17 might catch somebody's eye in terms of an evaluator?

18 A I think it would.

19 Q Yeah. And it might not catch it in a nice way; fair
20 to say?

21 A Possibly, yes.

22 Q I think you said that if a person that your
23 definition of diversity -- met that definition, which appeared
24 to me to be primarily gender or race, that if that person was
25 listed in the diversity section on the application and the

1 diversity section was scored based on that person, that it
2 didn't matter to the Department of Taxation if after the
3 license was issued that person was no longer a board member or
4 no longer an owner. Is that what you said?

5 A Well, there would be a transfer of interest or a
6 CHOW submitted.

7 Q Well, what if they weren't an owner? What if they
8 were just a board member? What if they were just an officer?
9 That's not a transfer of interest.

10 A Well, we would have seen that in the comparison of
11 what was in the application versus on their account.

12 Q Right. Yeah, but it was already granted. You
13 wouldn't have done anything about it, would you, because you
14 no longer had power to?

15 A I'm not sure I'm understanding your question.

16 Q In other words, sir, it speaks directly to why
17 diversity should not have been a category because it didn't
18 matter to you that they -- after the license was issued
19 whether those people were still there or not. Do you
20 understand that?

21 A Uh --

22 Q And that's been your testimony?

23 A I don't believe so.

24 Q Okay. The record will bear it out. Finally, I have
25 looked at the initiative, I've looked at the statute, and I

1 don't see anything in either one that says the deadline for
2 the Department of Taxation to issue the conditional licenses,
3 do you?

4 A There was -- if I understand your question
5 correctly, there was a section in the regulations --

6 Q You didn't understand my question because you just
7 said regulations and that word wasn't in my question, so
8 please listen to my question.

9 A All right.

10 Q I don't see anything in the statute or in the ballot
11 initiative that said that by December 5th of 2018 those
12 conditional licenses had to be issued. Would you agree that
13 the statute and the initiative didn't say that?

14 A I can't recall something in there specifically to
15 that.

16 Q The regulations said it?

17 A I believe so.

18 Q The regulations said it.

19 A Yes, I believe so.

20 Q And the regulations were made up by the Department
21 of Taxation; correct?

22 A Yes.

23 Q Okay. What was the hurry?

24 A What was the hurry to get --

25 Q Yeah.

1 A -- to get all the conditional licenses?

2 Q What was the hurry?

3 A Well, there was in the regulations --

4 Q In the regulations. What was the hurry to make that
5 the deadline?

6 A It's in the --

7 Q Let me ask it in a different way, sir. You said
8 that the FBI background checks back in 2014, some of them took
9 two months; right?

10 A Yeah, for a period of time.

11 Q All right. You would agree, would you not, that in
12 2014 there were no publicly traded companies operating medical
13 marijuana facilities in Nevada, would you not?

14 A I'd have to go back and look, but I'm pretty sure
15 there wasn't any publicly traded companies.

16 Q Okay, thank you. I'll take pretty sure for an
17 answer, okay. Now, based on pretty sure, based on -- back in
18 2014, what was the FBI asked to do in terms of background
19 checks?

20 A Just to run the FBI background check.

21 Q Just to run the -- But what did that entail? Do you
22 know what that entailed?

23 A I don't.

24 Q You don't. Okay.

25 A We received a report back from the FBI.

1 Q All right. Sir, you know what the FBI is, I'm sure,
2 and you've heard of the Drug Enforcement Administration;
3 right?

4 A Yes.

5 Q All right. The FBI has a file -- excuse me --
6 called the Counterdrug Information Indices System. Have you
7 ever heard of that?

8 A No, I have not.

9 Q Do you know what's in that?

10 A No.

11 Q It contains the names of individuals who relate in
12 any manner to official FBI drug law enforcement investigations
13 including but not limited to subjects of those investigations,
14 suspects, victims, witnesses and close relatives and
15 associates who are relevant to an investigation. Do you
16 understand that?

17 A I believe that's what it says.

18 Q All right. Now, you would agree, would you not,
19 back in 2014 and in 2018 the people who were being
20 backgrounded by the FBI were basically telling the FBI, look,
21 we're about to go out and commit a federal drug offense.
22 Would you agree with that?

23 A I don't know if I can answer to them.

24 Q Well, I think the judge could answer it and I think
25 anybody in this room can. It is a federal drug offense to

1 sell marijuana, isn't it?

2 A Yes, it is.

3 Q And you were asking the FBI that's in charge of
4 enforcing that law to background these people?

5 A That's what the -- we aren't asking them. That's
6 what the statute, I'm pretty sure --

7 Q The statute didn't say FBI. The statute said
8 background check. You asked them, sir, okay?

9 A Through the -- well, the regulations did.

10 Q Now -- Oh, the regulations.

11 THE COURT: You've got five minutes

12 MR. GENTILE: I've got five minutes.

13 THE COURT: And that's because Mr. Parker spent so
14 much time, I'm not giving him a chance again.

15 MR. PARKER: I don't need it. I'm good, Your Honor.

16 BY MR. GENTILE:

17 Q That system, sir, that system has automated indices
18 of information located in drug law enforcement case files of
19 the FBI, and examples in the case files include those
20 concerning distributing of controlled substances, continuing
21 criminal enterprises, racketeering enterprises, organized
22 crime drug enforcement task force cases and organized crime
23 drug intelligence cases. Do you understand that?

24 A I believe what you're reading is true.

25 Q All right. Do you think that it would behoove the

1 State of Nevada and therefore your Department that is charged
2 with finding qualified people to become involved in our now
3 federally illegal but state embraced business to learn if the
4 people that are applying as owners fit the description of any
5 of those things?

6 A I don't -- that's not my responsibility to make
7 those decisions.

8 Q No, I know. Somebody else. Do you understand that
9 both the FBI and DEA and other law enforcement agencies as may
10 participate in the counterdrug investigative information
11 sharing program can obtain that information?

12 A Can you repeat that?

13 Q But it might take two months.

14 A Can you repeat what you just said?

15 Q Sure. Do you understand that access to this system,
16 this intelligence database that involves people that were
17 selling drugs before it became legal in Nevada and other
18 people around them, they didn't have to be convicted of
19 anything, didn't have to be arrested for anything, that the
20 State of Nevada could get access to that data through the FBI?

21 A Yes.

22 Q But the State of Nevada didn't try it, did it?

23 A We did not access that database.

24 MR. GENTILE: Thank you.

25 THE COURT: Thank you. Does anyone else have any

1 questions within the next three minutes for this witness?

2 Thank you, sir. I would leave now. Go back to
3 Carson City before they change their mind.

4 THE WITNESS: Thank you, Your Honor.

5 THE COURT: And I again apologize to you for all the
6 inconvenience we put you through.

7 THE WITNESS: It's quite all right, Your Honor.
8 Thank you.

9 THE COURT: All right. Gentlemen, this half day
10 more witness took an entire day. My list shows that we're
11 seeing Pupo, Anderson, Groesbeck, Hawkins, a gaming
12 enforcement expert, Hernandez and Cronkhite. Who do we see
13 tomorrow morning at nine o'clock?

14 MR. GENTILE: Mr. Pupo, I guess, right?

15 THE COURT: Is that the answer to the question?

16 MR. SHEVORSKI: I don't know. It's still their
17 case.

18 THE COURT: Is Mr. Pupo coming tomorrow morning at
19 nine o'clock? Is he back from vacation?

20 MR. SHEVORSKI: He's here.

21 THE COURT: Great. It's so nice to meet you, sir.
22 I hope you had a good vacation.

23 MR. PUPO: It was all right.

24 THE COURT: All right. We'll see you at nine
25 o'clock in the morning.

1 MR. GENTILE: Your Honor, with regard to our gaming
2 expert, I may need to call him out of order.

3 THE COURT: Okay.

4 MR. GENTILE: He's in Melbourne, Australia right now
5 but he'll be back Friday and I'm anticipating we won't be done
6 Thursday.

7 THE COURT: Me, too.

8 MR. GENTILE: Okay, thank you.

9 MR. KOCH: Can we leave items in here, leave bins
10 here?

11 THE COURT: You can leave everything except your
12 electronic devices. As Mr. Bult found out, your electronic
13 devices may grow legs and walk off. You're welcome to leave
14 all of your boxes there. No one will be in court tomorrow at
15 all but you in the morning.

16 (Court recessed at 4:44 p.m. until the following day,
17 Wednesday, June 19, 2019 at 9:00 a.m.)

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INDEX

<u>NAME</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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PLAINTIFFS' WITNESSES

Steve Gilbert		3/61/98	101/120	
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EXHIBITS

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

None admitted in afternoon session

* * *

DEFENDANTS' EXHIBIT NO.

5039	80
5040	76

* * *

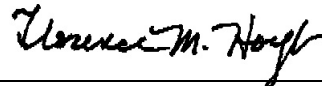
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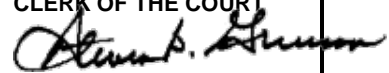
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FLORENCE M. HOYT, TRANSCRIBER

6/19/19

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

WEDNESDAY, JUNE, 19, 2019

EVIDENTIARY HEARING - DAY 9

VOLUME I OF II

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

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I N D E X

W I T N E S S E S

WITNESSES FOR THE PLAINTIFF:

JORGE PUPO

Direct Examination by Mr. Miller 7

E X H I B I T S

PLAINTIFFS' EXHIBITS ADMITTED:

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1 **LAS VEGAS, CLARK COUNTY, NEVADA, JUNE 19, 2019, 8:58 A.M.**

2 * * * * *

3 THE COURT: While we're waiting for Mr. Kemp, since
4 Mr. Rulis is here, how are we doing on our schedule, guys? How
5 are we doing on a schedule? Somebody tell me, Judge, we're
6 going great. Judge, we got four more days. Judge, we're never
7 getting done. Any of those would be good.

8 MR. SHEVORSKI: I don't know what's going on. I'm at
9 a side table, Your Honor.

10 THE COURT: Mr. Rulis, how are we doing?
11 Mr. Cristalli, how are we doing? I'm grilling them on
12 schedules, the guys who are actually doing the legwork as
13 opposed to those of you doing the brainwork.

14 MR. KOCH: What's our next week that we still -- we
15 have a jury trial going.

16 THE COURT: Supposedly.

17 MR. KOCH: All right.

18 THE COURT: They have not told me that they've
19 resolved their matter yet. They are scheduled to go through
20 July 2nd or July 3rd.

21 MR. GENTILE: Your Honor, other than our expert,
22 which, as I said --

23 THE COURT: Right, I got it.

24 MR. GENTILE: -- can't bring him, I'm going to try to
25 get a proffer, in which case, if the Court would accept the

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1 proffer. But I'm having logistic problems, because he's in
2 Australia.

3 THE COURT: Did you know it's a lot of time
4 difference there?

5 MR. GENTILE: I have no idea.

6 THE COURT: It's huge.

7 MR. GENTILE: Is it?

8 THE COURT: Like, 12 hours' difference.

9 MR. GENTILE: Wow, okay. Well -- but other than
10 that, with this, I don't think we're going to call any others.
11 That'll be it for my clients.

12 THE COURT: Okay. So let me go back to my question.
13 I show on our list we have Mr. Pupo who's here with us this
14 morning, Anderson, Groesbeck, Hawkins, your gaming person that
15 we've talked about, Hernandez, and Cronkhite. Anybody else
16 that I need to add to the list?

17 MR. SHEVORSKI: We have one more witness for the
18 State. It's an IT person.

19 THE COURT: IT person. Talk to me about listservs,
20 huh?

21 MR. SHEVORSKI: Correct.

22 THE COURT: How did I know?

23 MR. GENTILE: And Judge, on Mr. Groesbeck, I know
24 Mr. Koch wants to call him in his case in chief, which, you
25 know, he did me the courtesy of producing Mr. Java [phonetic],

1 so we would produce Mr. Groesbeck.

2 THE COURT: Sure.

3 MR. GENTILE: I'm not sure what points he wants to
4 make. Maybe there's another way to do it. But I want to talk
5 to him about that.

6 THE COURT: All right. So best guess on how long
7 Mr. Pupo's going to take, who's my lead on Mr. Pupo?

8 Mr. Miller, how long? Best guess. Put your DA
9 mindset on.

10 MR. MILLER: Most of the day.

11 THE COURT: Okay. We're not getting done this week.
12 Okay.

13 Anybody else got anything before I ask Mr. Pupo if
14 he'd like to join me up here?

15 Good morning, Mr. Pupo. Would you like to come up
16 and be sworn in?

17 Sir, I'll tell you as you walk up here that you're in
18 charge today. So if you need a break, you need more water, you
19 need coffee, you let me know. There's also M&Ms in those
20 dispensers behind you.

21 Raise your right hand, please. The little trucks and
22 things have M&Ms.

23 **JORGE PUPO**

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

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

3 THE WITNESS: My name is Jorge Pupo. That's
4 J-o-r-g-e, P-u-p-o.

5 THE CLERK: Thank you.

6 THE WITNESS: Good morning.

7 THE COURT: And, sir, there are lots of exhibit
8 binders. If you need help, let us know, because they are not
9 as well organized as I would like them to be.

10 You may proceed.

11 DIRECT EXAMINATION

12 BY MR. MILLER:

13 Q Sir, how are you presently employed?

14 A I'm the deputy executive director of the Marijuana
15 Enforcement Division for the Department of Taxation.

16 Q And how long have you been employed in that capacity?

17 A Since about summer of 2017.

18 Q And before that, what -- where were you employed?

19 A Department of Taxation as a revenue tax manager.

20 Q Okay. And before that, can you describe a little bit
21 about your prior employment, what other career opportunities
22 that you've been engaged in?

23 A I've been with the Department of Taxation since 2005,
24 started as a Revenue Officer II. Then I was a Revenue
25 Officer III, and I became a Tax Program Supervisor II, and I

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1 became a Revenue Tax Manager over Enforcement and Compliance
2 statewide.

3 Q And what did you do prior to joining the Department
4 of Taxation?

5 A So I did some work in manufacturing. I was a -- for
6 a while there I was a medical equipment repair tech, and a few
7 other jobs in private industry in the '90s.

8 MR. GENTILE: Your Honor, it's really difficult to
9 hear Mr. Pupo.

10 THE COURT: Jill, should we just have him move up?
11 He just --

12 THE COURT RECORDER: I can hear him fine.

13 THE COURT: Okay. Mr. Gentile is sometimes hard of
14 hearing. He will tell you that himself. It's not me saying
15 something he doesn't know. So if you will keep your voice up,
16 it may help. Sometimes I have people who sit too far back;
17 that's not you. Sometimes I need to move the mic; that's not
18 you.

19 So we'll do our best, Mr. Gentile.

20 MR. GENTILE: Thank you. Too much -- too many
21 Rolling Stones concerts.

22 THE COURT: I wasn't explaining why you had hearing
23 issues.

24 MR. GENTILE: Okay.

25 THE WITNESS: I hear you.

1 BY MR. MILLER:

2 Q And can you describe your duties and responsibilities
3 as the Deputy Director of the Marijuana Division?

4 A So I have, basically, oversight of the program as a
5 whole, the medical and recreational side. I also have other
6 duties regarding other excise taxes, cigarettes, other tobacco
7 products, live entertainment tax, other excise taxes. But
8 generally, oversight of the Marijuana Enforcement Division is
9 my primary responsibility.

10 Q All right. And as the Deputy Director position, is
11 that classified employee?

12 A That's an unclassified position.

13 Q Okay. And so who do you currently report to?

14 A To Director of the Department of Taxation, Melanie
15 Young.

16 Q Okay. And during the period of this application, who
17 was the Director of the Department of Taxation?

18 A Of the application process? So it would be Deonne
19 Contine and I believe Bill Anderson was around for part of it.

20 Q And the Director of the Department of Taxation,
21 that's a busy job, right?

22 A Yes.

23 Q And the director has a broad range of
24 responsibilities as director; is that right?

25 A Yes.

1 Q And certainly the director had a busy job during the
2 time period of this application process also, right?

3 A Yes.

4 Q Is it the Department of Taxation is a very large
5 agency; is that correct?

6 A It's a good size.

7 Q Okay. All right. In 2018 it oversaw the collection
8 of over \$6.87 billion in tax revenue; is that right?

9 A Yes.

10 Q And that was collected from over 17 different tax
11 sources?

12 A Yes.

13 Q And they maintain over 381 employees in the overall
14 department; is that right?

15 A Approximately.

16 Q Okay. And approximately a budget of about
17 \$31 million, I have my numbers here right?

18 A Approximately.

19 Q Pulled this from the budget hearings I think you were
20 present at --

21 A Right.

22 Q -- correct?

23 A Yeah.

24 Q All right. And other than Department of Taxation,
25 how many employees are -- do you oversee in your division?

1 A In the Marijuana Enforcement Division, approximately
2 44, 45, and Excise Division, probably another 30.

3 Q How big is your annual budget?

4 A Not sure. I'm not even sure what that number is.

5 Q Yeah. So who does the Director of Taxation report
6 to? Directly to the governor; is that right?

7 A Yes.

8 Q Ah. And the elected governor oversees the director;
9 is that right?

10 A Yes.

11 Q And you report directly to the director; is that
12 right?

13 A Technically, I report directly to the chief deputy.

14 Q Okay. But the governor appoints the director; is
15 that right?

16 A Yes.

17 Q And the director serves at will to the governor?

18 A Yes.

19 Q And of those three positions, the governor, the
20 chief -- who is the chief executive officer of the state, is an
21 elected position; is that right?

22 A Yes.

23 Q All right. The only people that can hold the
24 governor accountable or remove him from office are the people;
25 is that right?

1 A Yes, I believe so.

2 Q And your position is an unclassified, so that means
3 that -- who appointed you?

4 A The director.

5 Q Ah. So you serve at will -- on an at-will employee
6 at the pleasure of the director; is that right?

7 A That's right.

8 Q And we've heard testimony from both Mr. Plaskon on
9 Mr. Gilbert, but those report to you also; is that right?

10 A Say that again?

11 Q Those individuals report to you, right?

12 A Yes.

13 Q Mr. Gilbert and Mr. Plaskon?

14 A Well, Steve Gilbert is direct report. Mr. Plaskon
15 reports to Steven Gilbert.

16 Q Okay. But they work under you?

17 A Yes.

18 Q Okay. And you're the person that's ultimately
19 responsible for the enforcement and the administration of the
20 Marijuana Enforcement Division; is that correct?

21 A Yes.

22 Q All right. We've heard a reference a couple of times
23 during this hearing about the buck stops here; are you familiar
24 with that phrase?

25 A Yes.

1 Q Is it fair to say when we look at the accountability
2 of the administration of Nevada's Marijuana Enforcement
3 Division, that the buck stops with you?

4 A To a certain extent. I mean, ultimately, the
5 director's responsible for all of -- all programs under their
6 umbrella.

7 Q Okay. But we talked about that, about how big that
8 department is, right? And that's a very busy job, correct?

9 A Still responsible for it.

10 Q Okay. But, you know, anyway, in terms of the
11 administration of this division and the application process
12 that your division oversaw, ultimately, who has accountability
13 for how that process was run?

14 A I would say I do.

15 Q Yep. So is it fair to say that the buck stops with
16 you?

17 A Sure.

18 Q During this last legislative session, your division
19 requested additional resources and positions to align with the
20 needs of this growing industry; is that right?

21 A Yes.

22 Q Okay. And there are changes to Nevada's regulatory
23 structure that were also imposed under AB533; is that right?

24 A Yes.

25 Q And that new regulatory structure is based on

1 Nevada's gaming regulatory structure; is that fair to say?

2 A Partly, yes.

3 Q And the governor's general counsel, Brent Gibson, who
4 came from -- who was a general counsel to the Nevada's gaming
5 regulatory structure, led that change as part of the Governor's
6 Advisory Commission; is that right?

7 A Yes.

8 Q And you were present at those hearings?

9 A Yes.

10 Q And the new structures holds the position for the
11 executive director who would be appointed by a board that will
12 oversee the industry; is that correct?

13 A I'm not sure if it's going to be appointed by the
14 board or by the governor.

15 Q Okay. Well, if told you that Section 61.2 of the
16 statute says that the director -- the executive director is
17 appointed by the board and may be removed by the board, you
18 don't have any reason to doubt that, do you?

19 A No.

20 Q Okay. And is that a position that you intend to seek
21 appointment for?

22 A No.

23 Q You're not interested in holding it -- this new
24 position as executive director?

25 A No.

1 Q Will you expect to hold some position with -- from
2 the regulatory oversight of marijuana moving forth?

3 A No.

4 Q Okay. Your division is the agency tasked with the
5 oversight of regulating marijuana, we've discussed; is that
6 right?

7 A I'm sorry, say that again?

8 Q Your division is the only division in the state
9 that's tasked with the regulation of marijuana; is that
10 correct?

11 A No.

12 Q What other agency is tasked with oversight of
13 marijuana in the state?

14 A Department of Public Behavioral Health.

15 Q And where does their rules and responsibilities in
16 terms of oversight come into play?

17 A Patient Registry Program.

18 Q Got it. But in terms of the oversight for the
19 purposes of this application on retail marijuana dispensaries,
20 is your division the only division in the state that has
21 oversight of the marijuanas program --

22 A Yes.

23 Q -- marijuana program? Okay. And it was the people
24 of the state of Nevada directly, not the legislature, that
25 entrusted your division with establishing a robust regulatory

1 oversight of Nevada's marijuana licensing system when they
2 passed question to the initiative to regular tax marijuana in
3 2016; is that right?

4 A No, they entrusted it to Department of Taxation.

5 Q Got it. But it was the people of the state of
6 Nevada --

7 A Yes.

8 Q -- that entrusted the Department of Taxation with
9 that responsibility; is that right?

10 A Yes.

11 Q Got it. And you're aware that in order to qualify
12 for the ballot, the group that circulated 2016's Question 2
13 needed to obtain signatures of registered voter that equaled at
14 least 10 percent of the voters from the 2014 general election;
15 you aware of that?

16 A No. I knew that -- I know that they had to collect
17 signatures aren't on me.

18 Q Okay. You don't have any reason to doubt that?

19 A No.

20 Q And eventually they obtained those signatures and
21 Question 2 passed. You've seen the abstract from the Nevada
22 Secretary of State of those election results with 1,106,107
23 votes were cast for Question 2, with 602,463 in favor and
24 503,644 opposed. Now, I'm not asking you how you voted, but
25 you did vote in the 2016 general election, did you not?

1 A Yes.

2 Q Okay. So you sought a ballot measure with the
3 explanation and the full text that appeared on that ballot; is
4 that right?

5 A Yes.

6 Q Okay.

7 MR. MILLER: Will you show Exhibit 226.

8 THE COURT: 226?

9 MR. MILLER: Yeah, 226.

10 THE COURT: Last book or --

11 MR. MILLER: Page 25.

12 THE COURT: So I thought we had the ballot question
13 in yesterday as 2020.

14 MR. SHEVORSKI: Yes.

15 THE COURT: Is everybody okay using 226, which
16 appears to be similar?

17 MR. SHEVORSKI: I haven't seen it, but if it's the
18 same thing, then I'm good.

19 THE COURT: It looked like it had the seal on it and
20 everything when I saw it flash up.

21 Okay, Shane?

22 MR. MILLER: Got it. That's -- that's what I'm
23 saying, Judge.

24 THE COURT: Can we use it?

25 MR. SHEVORSKI: It's fine.

1 THE COURT: Yes, no? Come on, Mr. Shevorski.

2 MR. MILLER: We can switch to the other exhibit, it's
3 got the full packet. Page numbers are the same.

4 MR. SHEVORSKI: Fine. It's fine. I don't want to
5 hold things up.

6 THE COURT: Okay. You can hold us up, they've been
7 holding us up a lot, you can hold us up a little. If you want
8 to open the book and look at it.

9 MR. SHEVORSKI: No. I try to follow the Golden Rule.

10 THE COURT: It'll be admitted. Okay.

11 (Plaintiffs' Exhibit Number 226 admitted)

12 BY MR. MILLER:

13 Q So I think it begins on page 25. And you're aware
14 that the full text of that measure appeared on the ballot,
15 right?

16 A I suppose. I don't remember. I don't -- I guess so.

17 Q All right. And you're aware that as part of that
18 ballot measure, there were also arguments presented by both
19 sides, both for and against, right?

20 A Yes.

21 Q Turn to page 17. So it was an argument for passes
22 and there's a rebuttal to that argument. And then the
23 opponents give an argument. And then the pro side gets a
24 rebuttal. Are you aware of that?

25 A Yes.

1 Q Okay. So once that measure passed and those -- and
2 the vote totals were ultimately canvassed by the Supreme Court,
3 you're aware that that measure immediately became law?

4 A Yes.

5 Q And you required -- you're aware that it required no
6 legislative action, once the people passed that measure, it
7 became the law of the state?

8 A Yes.

9 Q And you're aware that the Nevada Constitution of
10 mandates that if a statutory measure is enacted by the people,
11 that statutory measure can't be amended by the legislature for
12 a period of three years; is that right?

13 A Yes.

14 Q And you're aware that it can't be amended by anyone
15 else for a period of three years, correct?

16 A Yes.

17 Q Was that a yes?

18 A Yes.

19 Q Okay. As part of the regulatory oversight, your
20 division is tasked with evaluating whether an applicant meets
21 Nevada's requirements to obtain a license to sell marijuana in
22 Nevada; is that right?

23 A Yes.

24 Q And you reviewed those legal requirements as part of
25 the competitive process in the last round of applications?

1 A Yes.

2 Q The regulatory oversight of the competitive process
3 in evaluating whether an applicant meets the legal requirements
4 to obtain a license to sell marijuana in Nevada is an important
5 part of your duties, right?

6 A Yes.

7 Q In fact, among all your duties, the regulation of
8 whether an application meets those legal requirements to obtain
9 a license to sell marijuana in Nevada is the most important
10 duty; is that also true?

11 A Say that again?

12 Q Among all your duties, the regulation of whether an
13 applicant meets the legal requirements to obtain a license to
14 sell marijuana in Nevada is the most important duty that you
15 have?

16 A I don't think so.

17 Q Okay. What ones are more important?

18 A Public safety, health.

19 Q Public safety and health. All right. And where does
20 that rank?

21 A Where does what rank?

22 Q I'm asking -- regulation of whether an applicant
23 meets the legal requirements to obtain a license; is it -- is
24 overseeing public safety and health a duty of yours?

25 A Yes. Like, regarding marijuana.

1 Q All right. Regarding marijuana. So you're talking
2 about public safety and health with respect to marijuana. Now,
3 how would your duties with public safety and health be an
4 oversight of yours? Give me some examples.

5 A Testing of marijuana.

6 Q Okay. So testing of marijuana?

7 A Yes.

8 Q Is it -- is your oversight of testing of marijuana
9 more important than evaluating whether or not an applicant
10 meets the requirements in order to obtain a license?

11 A I don't think we -- I would rank what's more
12 important than the other. They're all parallel duties. I
13 mean, one's not necessarily more important than the other.

14 Q Well, if you're force to rank them, where would you
15 put them? You've got somebody testing, is it more important?

16 A I'd say they're tied for first.

17 Q Tied for first.

18 A How's that?

19 Q So say it again. The testing of marijuana is equally
20 important to your determination of the qualifications for
21 licensure?

22 A Sure. Public health and safety is important.

23 Q All right. Any other ones that are equally important
24 to evaluating somebody's qualifications to obtaining a license?

25 A No. Not that I can think of right now.

1 Q So the testing of marijuana in order to maintain
2 public safety and health; is that fair?

3 A Sure.

4 Q Is equally important as evaluating someone's
5 qualifications for licensure to sell marijuana in the state?

6 A Sure.

7 Q All right. Now, up until a few years ago, if you
8 wanted to buy marijuana, the only way you could do it was to
9 purchase from people that are considered illegal drug dealers;
10 is that right?

11 A Prior to --

12 Q Prior to the passage of Medical Marijuana Program in
13 2014?

14 A Yes.

15 Q Okay. And as part of your regulation of issuing a
16 Nevada license to sell marijuana, you're now tasked with the
17 responsibility of taking the cultivation and sale of marijuana
18 out of that domain of criminals and regulating it in a
19 controlled system; is that right?

20 A Will you say that again?

21 Q As part of your regulation of issuing a Nevada
22 license to sell marijuana, you're now tasked with the
23 responsibility of taking the cultivation and sale of marijuana
24 out of that domain of criminals and regulating it in a
25 controlled system; is that right?

1 A No.

2 Q No? You're not tasked with that?

3 A No.

4 MR. MILLER: Okay. Can we pull up NRS 453D.020.

5 THE COURT: So, sir, this is the statute. If you'd
6 like the actual book, you -- I have it here if that would be
7 helpful to you rather than looking at it on the screen.

8 THE WITNESS: Okay. Thank you.

9 BY MR. MILLER:

10 Q Can you read me subsection 2?

11 A The people of the state of Nevada find and declare
12 that the cultivation and sale of marijuana should be taken from
13 the domain of criminals and be regulated under controlled
14 system where businesses will be taxed and the revenue will be
15 dedicated to public education and enforcement of regulations of
16 this chapter.

17 Q So when you read subsection 2, it says,

18 The people of the State of Nevada
19 declare the cultivation and sale of marijuana
20 should be taken from the domain of criminals
21 and be regulated in a controlled system.

22 How is that not one of your duties?

23 A Well, we regulate licensees. And that's where our
24 part comes in. As far as if you're talking about criminals,
25 black market, stuff like that, that's left to local law

1 enforcement.

2 Q It says that it's -- they're declaring that the
3 cultivation and sale of marijuana should be taken from the
4 domain of criminals and be regulated under a controlled system.

5 A Sure. I guess it's taken from them once you have a
6 license -- someone that's licensed to sell marijuana.

7 Q But the point of the licensure and the entire purpose
8 of the passes of this was it not to try to take this out of the
9 hands of the black market --

10 A Sure.

11 Q -- and license and control this in a controlled
12 manner?

13 A Sure.

14 Q All right. And if that is the point, and if that's
15 what the legislature -- if that's what the people of state of
16 Nevada tasked you with, that is one of your duties then, isn't
17 it?

18 A Sure.

19 Q Okay. And that's your job, right?

20 A Sure.

21 Q All right. Because in that area, the buck stops with
22 you; is that right?

23 A Yes.

24 Q All right. And taking marijuana out of the hands of
25 criminals, is it also your job to ensure that Nevada only

1 grants licenses to business owners who are suitable to sell
2 marijuana?

3 A Yes.

4 Q You know, the questions of suitable, the buck stops
5 with you also, right?

6 A Yeah, I think we've already determined that.

7 Q Okay. Well, I'm not taking anything for granted
8 here, sir.

9 The suitability of a Nevada licensee to produce or
10 sell marijuana is particularly important because producing or
11 selling marijuana is a criminal offense and a federal law;
12 you'd agree with that wouldn't you?

13 A Yes.

14 Q In fact, marijuana's still categorized on the Federal
15 Controlled Substances Act as a Schedule 1 drug; are you aware
16 of that?

17 A Yes.

18 Q Got it. And if convicted of those -- some of those
19 offenses, there can be big penalties, up to life in prison; is
20 that right?

21 A Sure.

22 Q And I'm sure you're familiar with the Cole
23 memorandum, right?

24 A Yes.

25 Q All right. And what did that memo say?

1 A The Cole memorandum said priorities for, basically,
2 states that had legalized or decriminalized marijuana, federal
3 priorities for the states to follow, but it did not take away
4 the enforcement rights of the federal government.

5 Q Okay. It has since been rescinded; is that right?

6 A Yes.

7 Q Got it. But when the voters passed Question 2, the
8 Cole memorandum was in effect and could have served as guidance
9 for the voters; is that right?

10 A Yes.

11 Q Got it.

12 MR. MILLER: Can we show Exhibit 223.

13 MR. SHEVORSKI: Are you referring to the memorandum?

14 MR. MILLER: Yes.

15 THE COURT: Any objection --

16 MR. SHEVORSKI: It was changed to 263.

17 THE COURT: -- to showing the memorandum?

18 MR. GRAF: Yes, 263 now.

19 MR. MILLER: Now it's 263?

20 THE COURT: Which number, Mr. Miller?

21 MR. MILLER: 263.

22 THE CLERK: Proposed.

23 THE COURT: Any objection to 263?

24 MR. SHEVORSKI: And what is it?

25 MR. MILLER: It's the full memo.

1 MR. SHEVORSKI: No objection.

2 THE COURT: Be admitted.

3 (Plaintiffs' Exhibit Number 263 admitted)

4 BY MR. MILLER:

5 Q It says -- says,

6 Congress has determined that marijuana
7 is a dangerous drug and the illegal
8 distribution and sale of marijuana is a
9 serious crime and provides a significant
10 source of revenue to large-scale criminal
11 enterprises, gangs, and cartels.

12 Nothing's changed either before or after the Cole
13 memo was written with regard to that statement; is that right?

14 A No.

15 Q Okay. And you talked about a list of priorities that
16 the Cole memo established, right, in which federal authorities
17 identified harms that can be subject to federal enforcement
18 even in states that allow the sale and cultivation under -- as
19 admissible under state law; is that right?

20 A Yes.

21 Q All right. And you've heard that list identified as
22 the Cole memo priorities?

23 A Yes.

24 Q All right. And those Cole memo priorities are areas
25 where the federal government has never wavered on its

1 commitment to enforce federal criminal marijuana statutes; is
2 that right?

3 A No.

4 Q Okay. It says that,

5 The department's guiding in this
6 memorandum rests on its expectation that
7 states and local governments that have
8 enacted laws authorizing marijuana-related
9 conduct will implement strong and effective
10 regulatory and enforcement systems that will
11 address the threat that those state laws
12 could oppose the public safety, public
13 health, and other law enforcement interests.

14 You're aware of that statement?

15 A Yes.

16 Q Okay. And,

17 If state law enforcement efforts are not
18 sufficiently [indiscernible] protect against
19 the harm set forth above, the federal
20 government may seek to challenge the
21 regulatory structure itself in addition to
22 continuing to bring individual enforcement
23 actions, including criminal prosecutions
24 focused on those harms.

25 So the Cole memo meant absolutely clear that to the

1 extent that there was lax regulation in any state, they would
2 continue to enforce federal law; is that right?

3 A Yes.

4 Q Okay. So no one says that even though there is a
5 letter that may give comfort to the states as the federal
6 government wouldn't crack down, violations of the criteria
7 underlined under the Cole memo priorities would lead to a very
8 bad things; is that fair?

9 A It may, yes.

10 Q Okay. And you're also familiar with the concerns of
11 federal regulators with financial transactions as it intersects
12 with marijuana?

13 A I'm sorry. Say that again.

14 Q Are you broadly familiar with the concerns of federal
15 regulators with respect to financial transactions in
16 conjunction --

17 A Somewhat, yes.

18 Q -- with the legalized marijuana industry? And are
19 you familiar with the set of guidelines that was sent out by
20 FinCEN in 2014 in order to provide clarity to the financial
21 institutions under that Cole memo?

22 A Somewhat, yes.

23 Q Okay. I'll just show you Exhibit 225.

24 THE CLERK: Proposed.

25 MR. MILLER: 225?

1 THE COURT: No objection?

2 MR. SHEVORSKI: No objection.

3 THE COURT: 225 will be admitted.

4 (Plaintiffs' Exhibit Number 225 admitted)

5 BY MR. MILLER:

6 Q And can you read me the headers under page 2 and 3,
7 the one that's labeled Marijuana Priority SAR Filings.

8 Well, first off, SAR is a little bit of industry
9 lingo; are you aware that that stands for Suspicious Activity
10 Report?

11 A Yes.

12 Q And you're aware that that's a report that would be
13 generated by a financial institutions, other agencies in order
14 to alert the most suspicious activity?

15 A Yes.

16 Q All right. So would you read me that header:
17 Marijuana Priority SAR Filings.

18 UNIDENTIFIED SPEAKER: Which page are you referring
19 to?

20 MR. MILLER: It's going to be on page 2 to 3. Maybe
21 we'll see it up there.

22 UNIDENTIFIED SPEAKER: Okay.

23 BY MR. MILLER:

24 Q It goes,

25 Marijuana Priority SAR Filings. In

1 financial institutes in filing SAR in a
2 marijuana-related business that reasonably
3 believes, based on its custom of due
4 diligence implicates ones of the Cole memo
5 priorities or violates state law should file
6 a marijuana priority SAR.

7 See where that's in there, sir?

8 A They keep moving it.

9 THE COURT: And, sir, if you'd rather look in the
10 book, we do have all of these in paper filings behind you.

11 THE WITNESS: Okay. Thank you, Your Honor.

12 UNIDENTIFIED SPEAKER: I have it on page 4.

13 MR. MILLER: Okay. Sorry. Page number's screwed up.
14 All right.

15 THE WITNESS: Are we on it?

16 MR. MILLER: We're on page 5, let me find the section
17 I said is red flags to distinguish priority SARs.

18 BY MR. MILLER:

19 Q All right. Says,

20 The following red flags indicate that a
21 marijuana-related business may be engaged
22 activity that implicates one of the Cole memo
23 priorities or violates state law. These red
24 flags indicate only possible signs of such
25 activity and also did not constitute an

1 exhaustive list.

2 You're aware of that concern?

3 A Yes.

4 Q All right. So there are possible triggers for
5 additional federal oversight based on financial activity when
6 Nevada's industry doesn't regulate it appropriately; is that
7 right?

8 A No.

9 Q No?

10 A I mean, I don't know how that ties in with
11 financial -- the state regulating appropriately. I mean, can
12 you clarify that question?

13 Q Got it. Well, if you don't have strong regulatory
14 controls, right, and regulatory controls lead to a filing of an
15 SAR, that share with federal agencies that could trigger one of
16 the Cole memo priorities, it could lead to additional scrutiny
17 of Nevada's marijuana industry; is that right?

18 A No. We don't regulate their financial dealings.

19 Q You don't have any intersection at all with the
20 financial dealings --

21 A I'm sorry?

22 Q -- of the marijuana industry? You don't have any
23 intersection at all?

24 A There's some.

25 Q What are those?

1 A They're -- as their requirements for, like, in this
2 application process, to show that they're financially stable,
3 that type of thing. But not with banking or not when -- not in
4 direct relation to how they bank or not bank.

5 Q Okay. But could this also be triggered, for example,
6 if the Department failed to conduct appropriate background
7 checks and the individuals that were obtaining revenue went to
8 a financial institution and deposited that amount, and it
9 triggered a suspicious activity report to be generated?

10 A I would agree with that.

11 Q And so you do have some involvement and enforcement
12 of areas that would potentially trigger interaction with
13 financial institution, they could alert other federal agencies
14 that they should maybe take a stronger look at Nevada's
15 regulatory structure; is that right?

16 A Sure. Okay.

17 Q So in that context, you actually wouldn't disagree,
18 then, that your enforcement of Nevada's industry, carry
19 implications throughout our agencies that could draw additional
20 scrutiny and maybe bring Nevada harm; is that right?

21 A Sure.

22 Q When -- you're aware that Attorney General Sessions
23 rescinded the Cole memo, right? We talked about that?

24 A Yes.

25 Q And Attorney General Sessions indicated that he would

1 not -- he would continue to enforce federal law even in spite
2 of state regulations; is that right?

3 A Yes.

4 Q Got it. I'm going to show you Exhibit 224. This is
5 a letter from a --

6 THE CLERK: Proposed.

7 THE COURT: Any objection?

8 MR. SHEVORSKI: No objection.

9 THE COURT: Be admitted.

10 (Plaintiff's Exhibit Number 224 admitted)

11 BY MR. MILLER:

12 Q So this letter was dated July 24th, 2017. You were
13 involved in oversight of the marijuana during that time period;
14 were you not?

15 A Yes.

16 Q All right. And you generally stay aware of
17 regulatory developments at the federal level that influence or
18 impact the industry in Nevada?

19 A What period is this?

20 Q July 24th, 2017.

21 A Yeah. I may have been over at that time.

22 Q You may have been what?

23 A I may have been in charge as deputy at that time. I
24 took over some time I believe in the summer of 2017.

25 But what's your question regarding this?

1 Q So this might have been right when you
2 [indiscernible], but when you took over the program, did you
3 make any efforts to review the federal landscape and how
4 regulators --

5 A Yes. Uh-huh.

6 Q -- saw -- okay.

7 And so are you aware that Attorney General Sessions
8 sent a letter to the states of Washington and Oregon
9 essentially criticizing them for their regulatory efforts and
10 highlighting his belief that to legalize marijuana continued to
11 cause public safety concerns?

12 A Yes.

13 Q Now, showing you the excerpts of that letter, I want
14 to read. It says,

15 "The recreationally licensed marijuana
16 market is competitive -- is incompletely
17 regulated. The leading regulatory violation
18 in that market has been the failure to
19 utilize and/or maintain traceability of
20 marijuana products."

21 "Since legalization in 2012, Washington
22 State marijuana has been found to have been
23 destined for 43 different states."

24 So Attorney General Sessions is clearly identifying
25 serious concerns that he had with states that believed at the

1 time that they were appropriately regulating marijuana; is that
2 right? Is that a fair statement?

3 A Well, I believe he had his concerns with Washington,
4 State.

5 Q Okay. And Oregon; correct? You're aware he sent a
6 letter to Oregon; right?

7 A And Oregon.

8 Q Nothing would prevent the Attorney General today from
9 sending a similar letter to the State of Nevada if they
10 identified concerns that Nevada's regulatory structures were
11 lax; is that right?

12 A Right.

13 Q And you're aware only two weeks ago the U.S. attorney
14 for Nevada Nicholas Trutanich said in a interview with the Reno
15 Gazette Journal that, Marijuana remains illegal under federal
16 law, and my job is to enforce federal law. Are you aware that
17 he made that statement?

18 A Yes.

19 Q All right. Given the current state of federal
20 indicators, is it fair to say that the Cole memo priorities are
21 the minimum standard that the State should be expected to
22 uphold?

23 A Yes.

24 Q If the regulatory structure isn't sufficient to
25 protect against those harms identified in the Cole memo

1 priorities, Nevada's entire regulatory structure could be
2 challenged by federal courts; is that right?

3 A Will you say that again.

4 Q If our regulatory structure were insufficient to
5 protect against the harms identified in the Cole memo
6 priorities, Nevada's entire regulatory structure could be
7 challenged by the federal authorities; is that right?

8 A Sure. I believe so. They have the authority to do
9 so.

10 Q All right. And if federal authorities brought
11 enforcement actions, they could potentially issue cease and
12 desist actions on Nevada's industry; is that right?

13 A Yes.

14 Q They could conduct seizures on all properties under
15 the cease and desist?

16 A Yes.

17 Q And they could bring criminal investigations and
18 prosecutions; is that right?

19 A Yes.

20 Q When we sit here today, the only comfort we have in
21 protecting against a federal crackdown on the industry is
22 maintaining a regulatory structure that's robust and effective
23 enough to let the federal government focus resources elsewhere;
24 is that fair?

25 A Yes.

1 Q And if tomorrow U.S. Attorney Trutanich led on
2 enforcement action against Nevada's licensees, our entire
3 industry may collapse; is that a fair statement?

4 A Possibly.

5 Q Okay. Because without strong, effective and robust
6 regulation of those we choose to license in the State of Nevada
7 to sell marijuana, we might not even have an industry; is that
8 right?

9 A Will you say that again.

10 Q Without effective and robust regulation of those that
11 we choose to license to sell marijuana in this state, we might
12 not even have an industry; is that right?

13 A Sure.

14 Q Do you have some doubt about that?

15 A No, that's fine. I agree.

16 Q Okay. That's fairly serious; right?

17 A Right. Yeah.

18 Q If the federal government determines at any point
19 that Nevada's regulatory structure is too lax --

20 A Sure.

21 Q -- that they need to take enforcement action, they
22 could shut the entire industry down?

23 A Yes, they can.

24 Q Okay. And it's your job to prevent that; right?

25 A Yes.

1 Q Because the buck stops with you then in that regard;
2 is that right?

3 A Yeah. Again I think we determine that.

4 Q Yeah. Well, we've been here for a couple of weeks
5 when you've been on vacation [indiscernible] where the buck
6 didn't stop with people, and we're trying to get to the bottom
7 of this?

8 MS. SHELL: Objection. Argumentative.

9 THE COURT: Overruled.

10 MS. SHELL: Thank you.

11 BY MR. MILLER:

12 Q Earlier in your testimony you said that if you were
13 asked to rank your duties of enforcement, you told me that the
14 testing of marijuana as it impacted public safety and health
15 was equally as important as the process that we're talking
16 about now, your role in determining the qualifications of
17 suitability for the licensure to sell marijuana; is that right?

18 A Yes.

19 Q So if you licensed an operation that sold marijuana
20 to kids or to a cartel, any of those concerns that were
21 outlined in the Cole memo priority, you'd have a much bigger
22 regulatory problem, wouldn't you, than your day-to-day
23 responsibilities in ensuring that the testing of the marijuana
24 maintained public safety?

25 A I think they're equally huge.

1 Q Equally huge?

2 A Sure. I mean, look, if you put out -- if marijuana
3 is not properly tested, you have immunocompromised patients
4 smoking, inhaling, eating contaminated product that may or may
5 not cause death, that could be the collapse of the industry in
6 Nevada as well.

7 Q Okay. But if you have a whole bunch of dispensaries
8 doing the same activity, don't you, in fact, have a bigger
9 problem, sir?

10 A Yeah. Yeah. I mean, you deal with it as the problem
11 persists. If you have, you know, a large amount of
12 dispensaries that are selling to minors and selling, yeah,
13 that -- or diverting product, yeah, that's a huge problem. It
14 takes priority.

15 Q But if you fail to evaluate the criteria for whether
16 or not a operation had a track record of selling to minors and
17 then initially gave more licenses to that individual, that
18 could be a big problem; right?

19 A Right. Say that again.

20 Q If you failed to identify -- if you failed to
21 consider the fact that a licensee has sold marijuana -- sold
22 marijuana to minors or had been so lax in their regulatory --
23 in following regulations that they had had a track record of
24 continuing to violate your regulations, that could be a
25 significant issue; right?

1 A Unless corrective action has been taken by that
2 licensee and the department was okay with that corrective
3 action. I mean --

4 Q If you failed --

5 A -- compliance issues all around.

6 Q If you failed to consider that as part of a licensure
7 process, that could be a significant issue for the State of
8 Nevada; is that right?

9 A If it was part of the criteria and we failed to, I
10 would say that's a problem.

11 Q What do you mean by "part of the criteria"?

12 A Well, if it's one of the things that we're supposed
13 to consider in the application process.

14 Q Well, you determined what's supposed to be considered
15 in the application process; right? Didn't we talk about the
16 buck stops with you?

17 A Sure.

18 Q So you had the ability to determine what the
19 department was going to evaluate as part of this licensure
20 process; right?

21 A I think I had a say in it, yes.

22 Q Well, ultimately the buck doesn't stop with you? Who
23 else had a say? Who else are we going to share the blame with
24 here if something went wrong with the application?

25 A I'll take the blame. It's not a matter of sharing

1 the blame.

2 Q Okay.

3 A It's a process.

4 Q Okay.

5 A I participate in the making of the regulations along
6 with the director, and as you know, you know, it goes through
7 the adoption process with the Nevada Tax Commission and then
8 ledge (phonetic) commission reviews it.

9 Q Right. We'll get to that, but your division or your
10 department developed the criteria by which the application --
11 application process went forward; is that right?

12 A Yes.

13 Q All right. So you had the ability to decide which
14 areas you wanted to focus on; is that correct?

15 A Sure. I mean, we looked at the Governor's task force
16 recommendations. We looked at 453A, which is closely related,
17 and public input from the licensees. That all went in to
18 creating the criteria for the regulations.

19 Q Okay. Did you look at the Cole memo?

20 A I don't recall specifically looking at the Cole memo
21 when doing the regulations, but I believe that, you know, they
22 were considered, those priorities, diversion, selling to
23 minors --

24 Q You gave --

25 A -- keeping money out of criminal organizations.

1 Q Right. You gave appropriate consideration you
2 believe to the concerns that were identified in those Cole memo
3 priorities and whether or not these applications were properly
4 identity evaluated, the criteria; is that correct?

5 A I think so, yes.

6 Q All right. So when you developed all of that
7 criteria, right, part of that would've included whether or not
8 a marijuana licensee appropriately tested marijuana according
9 to the regulations in order to protect public safety; is that
10 right?

11 A Yes, we looked at that.

12 Q Okay. And so when you looked at that criteria as to
13 whether or not a licensee had a track record of compliance in
14 an area, if you handed out licenses to somebody who had a very
15 poor track record in that regard and hadn't appropriately
16 tested marijuana and was leading the public safety concerns all
17 across the State, wouldn't giving them additional licenses be a
18 bigger problem than the day-to-day regulation of them?

19 MR. SHEVORSKI: Objection. Compound.

20 THE COURT: Overruled.

21 You can answer.

22 THE WITNESS: All right. Restate that. Can you
23 state that again.

24 MR. MILLER: Sure.

25 / / /

1 BY MR. MILLER:

2 Q You looked at that criteria of whether or not
3 licensees, you're telling me, that application of that --
4 you're telling me that the application evaluated whether or not
5 licensees have a track record of compliance; is that right?

6 A Whether the licensee had a good track record of
7 compliance?

8 Q Right. Didn't we just go through this?

9 A Yeah. Yeah. Go ahead. Uh-huh.

10 Q Okay. So it's part of your responsibility to make
11 sure that you didn't give out licensees -- give out licenses to
12 licensees who had a poor track record of compliance; is that
13 right?

14 A Along with other criteria, yes.

15 Q Okay. But it was part of the criteria that you were
16 supposed to look at; right?

17 A Yes.

18 Q Because if you didn't give appropriate consideration
19 to that and you gave licensee -- licenses to individuals who
20 had a poor track record of compliance, that could bring
21 additional federal scrutiny; right?

22 A It may. Yes.

23 Q Okay. And if you gave licenses to licensees who
24 didn't properly test marijuana and it posed a real threat to
25 public safety, that would cause an even bigger problem;

1 correct?

2 A It can. Yes.

3 Q It can? Is this --

4 A I said it can.

5 Q -- something you take lightly?

6 A It can.

7 Q It would cause a very serious problem, wouldn't it?

8 A Yes.

9 Q And so isn't the licensing of those individuals and
10 taking into consideration their background the most important
11 responsibility you have, sir?

12 A Well, I think you look at an application as a whole,
13 but background is very important.

14 Q Okay. But if you fail to look at the background of
15 an individual and issued licenses to someone that was
16 associated with the cartel, for example, that could end
17 Nevada's entire industry; right?

18 A I think that's a -- I wouldn't say that it would
19 destroy Nevada's industry. It's possible, but, you know,
20 federal intervention probably just, you know -- I don't know
21 what they'll do. They could say get rid of this guy, you know,
22 or get rid of this entity, or if they choose they could try to
23 shut down the entire marijuana program in the state. I don't
24 know what they'd do.

25 Q So you told me you read that memo from Attorney

1 General Sessions; is that right?

2 A Yes.

3 Q Did you see anything as serious in that memo as the
4 State of Washington or Arizona or Oregon as the State of Nevada
5 issuing a license to a cartel?

6 A As far as I know the federal government hasn't shut
7 down their programs.

8 Q Well, Attorney General Sessions didn't allege that
9 they had issued a license to sell marijuana to cartels; is that
10 right?

11 A No.

12 Q But if you issued a license to the Sinaloa Cartel,
13 you're telling me that there's some question as to whether or
14 not the federal authorities would come in and shut down
15 Nevada's regulatory structure?

16 A Oh, no. I mean, there's -- that's a huge problem.

17 Q Okay. And you understand the seriousness of that;
18 correct?

19 A Sure.

20 Q So who you gave licenses to in the State and the
21 process by which you review those applications is the most
22 important job of yours; is that right?

23 A Is one of the important.

24 Q You're still not going to say it's the most important
25 job?

1 A Equally important.

2 Q Equally important as testing of marijuana in order to
3 maintain -- is that what you're saying, that the responsibility
4 of testing marijuana in order to maintain public safety?

5 A Public safety.

6 MS. SHELL: Objection. Asked and answered.

7 THE COURT: Overruled.

8 THE WITNESS: Public safety and health is equally
9 important. They both could bring down the industry. That's
10 what we're talking about. You're talking about bringing down
11 the industry. They could both bring down the industry.

12 Q So you're saying that your day-to-day enforcement as
13 a beat cop in looking at the testing and enforcement of --

14 THE COURT: You called him a beat cop?

15 MR. MILLER: Yeah.

16 THE COURT: I did tell you to be back in your DA
17 days, but he's a revenue officer and now the director of
18 Marijuana Enforcement Division.

19 Right?

20 So we're not a beat cop.

21 BY MR. MILLER:

22 Q If you find instances, sir --

23 A I'm sorry?

24 Q If you find instances of a licensee that's
25 inappropriately testing and that's causing a public safety

1 concern, you have the ability to shut them down; is that right?

2 A We take appropriate action.

3 Q Do you have the ability to shut them down if they are
4 cause a public safety concern?

5 A Sure.

6 Q And would that be appropriate action?

7 A There is a due process involved, but, yeah, I would
8 try to possibly shut them down.

9 Q Okay. When you say due process, what would happen?

10 A Well, we'd file a complaint. They have a right to a
11 hearing in front of an Administrative Law Judge.

12 Q And if you found that somebody was not testing
13 marijuana that was causing a public safety concern, what action
14 would you take?

15 A Well, I would do a -- I'd summarily shut them down
16 and then schedule them for a hearing.

17 Q Okay. And if you shut them down, it could
18 potentially be considered strong and effective enforcement of
19 Nevada's marijuana relations; right?

20 A Yes.

21 Q Okay. But if you allow that pattern to continue and
22 you gave licenses to people that engaged in that behavior
23 before, that's the issue that we're talking about here in
24 evaluating the licenses; is it not? That could be the bigger
25 problem. If you gave licenses to somebody that had been doing

1 it all along, and you hadn't shut them down before, that's a
2 much bigger problem; is it not? Is that a much bigger
3 priority -- shouldn't that be a much bigger priority for the
4 department? Evaluating to make sure that the qualifications
5 for licensure didn't give licenses to those kind of people?

6 A Sure. I mean, yeah, we don't want the cartel here.

7 Q We've heard testimony about the transition from
8 medical to recreational and the early start program, and we've
9 also heard testimony that the department determined that the
10 applications for recreational marijuana would be largely based
11 upon the 2014 application process; is that accurate?

12 A Yes.

13 Q Okay. In terms of the last competitive recreational
14 license application, Mr. Plaskon, Ms. Cronkhite and Mr. Gilbert
15 were largely responsible for developing that application; is
16 that right?

17 A Yes.

18 Q And then you reviewed and signed off on the
19 application; right?

20 A Yes.

21 Q And I understand you largely based the 2018
22 recreational application on the 2014 application. We heard
23 some testimony from Mr. Plaskon that I want you to confirm. If
24 we could pull up Day 5 of the transcript on page 92.

25 Can you read for me Mr. Plaskon's response when he

1 says, yeah, the question was --

2 A Just the response?

3 Q -- Was the person primarily responsible for the
4 application in other words, the form of words in that aspect?

5 Can you read me the answer.

6 A Sure. It says,

7 He was. Mr. Pupo would always give
8 final approval on stuff, but the application
9 was put together with or by Kara Cronkhite,
10 myself and Mr. Pupo, and again we took the
11 application from 2014, compared that to the
12 current NRS or NAC 453D, updated it as
13 needed, and then we actually threw it around
14 to our committee, through the office and the
15 program, and everybody fact checked --
16 checked it and ran it back and forth, did the
17 crosswalk to the regulations.

18 Q Is that a fair synopsis, do you think, of the process
19 that you undertook in order to convert the 2014 application to
20 what you used in 2018?

21 A No.

22 Q Okay. What happened?

23 A I think that looking at the 2014 application
24 [indiscernible], we looked at the governor's task force
25 recommendations, and looked at 453A and licensee's comments

1 from public workshops, and those were all taken into
2 consideration. But other than that, yeah, I gave final
3 approval. Once the application was formatted and formed, I
4 reviewed it and gave final approval.

5 Q Okay. But the application itself and what it was
6 largely based on on the 2014 application; is that correct?

7 A Along with the other things I mentioned, yes.

8 MR. MILLER: All right. So can we pull up
9 Exhibit 5002, which is a medical and Exhibit 5. This is the
10 recreational. Is it possible to do them side by side?

11 BY MR. MILLER:

12 Q Is it fair to say that the general structures are the
13 same in terms of the layout? There's a lot of similarities; is
14 that right?

15 A Yes.

16 Q Even the font?

17 A Yes.

18 Q Yeah. And the forms are largely similar. They're
19 just updated to conform with the new law and some of the new
20 criterias (sic) that you talked about; right?

21 A Yes.

22 Q And even the instructions, most of those are the
23 same; is that correct?

24 A Yes.

25 Q All right. There are some differences. Obviously

1 there are new dates; is that right?

2 A Right.

3 Q And the instructions were updated to provide
4 references to the new statutes that you talked about; right?

5 A Right. I believe to also take out any medical
6 references.

7 Q Okay. And the new grading criteria to conform with
8 some of the new laws; is that correct?

9 A Yes.

10 Q And you also updated old provisions that no longer
11 apply, and you deleted all the references to medical; is that
12 right?

13 A Yes.

14 Q Or you at least attempted to; is that right?

15 A Yes.

16 Q And then there was some effort to provide more detail
17 in the application from what was provided in 2014; right?

18 A Yes.

19 Q And as a result there were some additions to the 2018
20 application that were not present in 2014. Is that also true?

21 A I believe so, yes.

22 MR. MILLER: Okay. Can we pull up Attachment J,
23 which is page 34.

24 BY MR. MILLER:

25 Q Are you familiar with this attachment, sir?

1 A Yes.

2 Q Okay. A series of federal laws and authorities.

3 Read me section -- the one that begins Section 13 of PL92500.

4 A Section 13 of PL 92500, prohibition against sex
5 discrimination under Federal Water Pollution Control Act.

6 Q Do you know what that provision provides for?

7 A No, I don't.

8 Q Okay. It's a long statute, but I'll just read the
9 one part. It's Section 9.1.1:

10 No person in the United States shall on
11 the ground of sex be excluded for
12 participation in, be denied the benefits of
13 or be subjected to discrimination under any
14 program or activity receiving Federal
15 financial assistance under this act, the
16 Federal Water Control Pollution Act or the
17 Environmental Financing Act.

18 You're regulating an industry that's illegal under
19 federal law. Clearly none of your licensees are receiving
20 Federal financial assistance under the Federal Water Pollution
21 Control Act or the Environmental Financing Act; right?

22 A Right.

23 Q Can you read me Section 306 of the Clean Water -- Air
24 Act and Section 508 of the Clean Water Act, including executive
25 order 11738, the administration of the Clean Air Act and the

1 Federal Water Pollution Control Act with respect to federal
2 contracts or grants.

3 Do you see that provision?

4 A Where we at? Which one?

5 Q Section 306 -- these are federal statutes. So they
6 get a little wordy, sir. It took some attorneys some time to
7 review this on Attachment J I'm sure.

8 Section 306 of the Clean Air Act and Section 508 of
9 the Clean Water Act, do you see that provision?

10 A Yes.

11 Q And then there's a lot of other criteria. Do you
12 know what that one provides?

13 A No.

14 Q All right. If I represented to you that it provides
15 that if you're a party to a federal contract, grant or loan
16 with a federal agency, you'd have to comply with the Clean
17 Water Act and the Federal Water Pollution Act. Would you agree
18 that that probably also wouldn't apply to your licensees?

19 A Yes.

20 Q All right. Because none of your licensees are
21 getting grants or loans from the federal agencies; right?

22 A Not that I know of.

23 Q "Not that you know of." I mean, would it be possible
24 for licensees of marijuana establishments in this state to
25 receive federal grants?

1 A I would not think so.

2 Q I wouldn't think so either. That might have been a
3 mistake to include this attachment.

4 MR. GRAF: Objection, Your Honor. Calls for a legal
5 conclusion.

6 THE COURT: Overruled.

7 THE WITNESS: I'm sorry. What did you say, Your
8 Honor?

9 THE COURT: Overruled. You can answer.

10 THE WITNESS: Yeah, I would probably agree. It's
11 irrelevant.

12 BY MR. MILLER:

13 Q It's irrelevant?

14 A [Indiscernible.]

15 Q Well, where did it come from?

16 A I believe that came from the 2014 application.

17 Q Okay. We'll pull up the 2014 application. Why don't
18 you look through at the end. Do you want to look through and
19 confirm whether or not this attachment was on the 2014
20 application.

21 A I mean --

22 Q Take your time.

23 THE COURT: What's the exhibit number if he prefers
24 to look at the paper copy.

25 MR. MILLER: Sure. It is Exhibit Number 5002.

1 THE COURT: So, Ramsey, can you help him find 5002
2 just in case he wants to flip through the entire application,
3 as Mr. Miller offered.

4 THE CLERK: It's at that part at the very bottom and
5 then second to the last --

6 BY MR. MILLER:

7 Q Sir, will you accept my representation that it's not
8 in there?

9 A Sure.

10 THE COURT: You offered to let him flip through the
11 whole thing. You know, I wasn't going to sit here and watch
12 Shane go through every page.

13 BY MR. MILLER:

14 Q It's not in there. You have no idea where that
15 attachment came from?

16 A No. I mean, as far as I know, my understanding of
17 that was put together by, it was my understanding that the
18 DAG's office in 2014 assisted the DPBH to do these
19 applications, and I assumed that was part of that --

20 THE COURT: Okay. Wait. What's the DAG's office?

21 THE WITNESS: The Deputy Attorney General's office.

22 THE COURT: Okay. So the AG's office.

23 THE WITNESS: The AG's office.

24 THE COURT: Okay. Thank you.

25 / / /

1 BY MR. MILLER:

2 Q So I understand, you're saying that the Attorney
3 General's office was involved in the review of which
4 application that would have been --

5 A 2014.

6 Q Okay. But I just told you to accept my --

7 A Well, I don't know if it was reviewed. They
8 assisted.

9 Q I'm sorry?

10 A It's my understanding that they assisted DPBH.

11 Q Can you break down these government acronyms for me.
12 It's been a while since I've been in government too. So --

13 A That they assisted the Division of Public Behavioral
14 Health in creating the application in 2014.

15 Q Okay. Well, again, I can offer to have you look
16 through the 2014 application, but I'm making a --

17 A No, I'm just saying that's my understanding.

18 Q All right --

19 A That's --

20 Q -- but Attachment J is not in the 2014 application.

21 A Okay. I said I would take your word for that.

22 Q Okay. But somewhere between 2014 and 2018 -- now,
23 2018, Attachment J is in that application; is that right?

24 A Apparently, yes.

25 Q What do you mean "apparently"? We can pull it up if

1 you want.

2 A Yes, it's there.

3 Q Okay. You don't have any doubts that Attachment J
4 was provided to all the applicants, do you?

5 A No.

6 Q Okay. Attachment J was included?

7 A Sure.

8 Q All right. Do you know where Attachment J came from?

9 A I do not.

10 Q Did the Attorney General's office help you in
11 assembling this application?

12 A Not that I know of.

13 THE COURT: The 2017 application?

14 MR. MILLER: The 2018 application.

15 THE WITNESS: No.

16 MR. MILLER: I'm sorry. 2017 --

17 THE COURT: I'm sorry, 2018, yeah.

18 MR. MILLER: Yeah.

19 THE WITNESS: No.

20 BY MR. MILLER:

21 Q Okay. So at some point Attachment J was included,
22 but you can't tell us where it came from?

23 A That's correct.

24 Q All right. When we moved forward with this
25 application process, recreational marijuana law was an entirely

1 new legal framework. Would you agree with that?

2 A When? Say that again.

3 Q When we moved forward with the recreational marijuana
4 law, that was established on an entirely new legal framework;
5 is that correct?

6 A Can you -- well, what do you mean by "legal
7 framework"?

8 Q Well, when they imposed -- when the voters enacted
9 Nevada's recreational law, they established an entirely new
10 legal framework for that; right?

11 A Yes.

12 Q They didn't go and amend the old medical statutes --

13 A No.

14 Q -- is that correct?

15 A Correct.

16 Q So and that required you to adopt regulations. Is
17 that also true?

18 A Yes.

19 Q All right. And QuantumMark, as I understand through
20 the testimony here that we've heard was involved in the
21 drafting of the regulations that would apply in the 2018
22 recreational process. Is that also true?

23 A Yes.

24 Q And were you involved with that as well?

25 A Yes.

1 Q All right. What was your involvement?

2 A Just participated with a group of other people and
3 gave my input.

4 Q Okay. And what happened during that process?

5 A So QuantumMark was initially brought in to assist,
6 facilitate the governor's task force meetings, and then they
7 were contracted again to assist the department in creating
8 regulations. DPBH had used them in 2014 to create the
9 regulations for 453A. Then they basically put together some of
10 the regs and formatting. They did formatting work. They
11 brought in -- they had benchmarks from other states. And then
12 we sat together as a group and discussed what -- when they did
13 the BNR regulations.

14 Q Okay. And with respect to the development of the
15 regulations, what process did you use to determine and develop
16 the regulations that pertained to the suitability
17 determinations of the licensees?

18 A So generally, you know, we would look at the
19 governor's task force. We'd look at 453A. You know, what the
20 Division of Public and Behavioral Health had done the
21 previous -- you know, how they operated the previous three
22 years or so.

23 Q Okay. Do you remember anything specifically within
24 453A? When we're talking about 453A, we're talking about the
25 language that appeared on the ballot; right?

1 A No. 453A is the medical program.

2 Q All right. Are you aware that 453A is just the
3 codification of what appeared on the ballot? Is that right?
4 We went through this.

5 A 453A, no.

6 THE COURT: 453D.

7 MR. MILLER: 453D. Sorry.

8 THE COURT: I was wondering.

9 MR. MILLER: [Indiscernible.]

10 THE WITNESS: I'm talking about 453A.

11 BY MR. MILLER:

12 Q You looked at the suitability of applicants in 453A
13 and used that as a basis in order to create the regulations
14 for -- for NAC 453D?

15 A Well, the governor's task force recommended that 453A
16 be used as a foundation for regulations for recreational.

17 Q And that would include the determinations on
18 suitability?

19 A Right. What the legislature put forth in 453A.

20 Q Okay. And when you looked at suitability, who else
21 did you consult with as to whether or not you would be
22 evaluating the right criteria?

23 A No one outside the agency.

24 Q Okay. So you did that all internally?

25 A Yes.

1 Q All right. Now, the voters tasked your department
2 with confirming that business owners are suitable to sell
3 marijuana. We covered that; right? It's 453D.0203B:

4 People of the State of Nevada proclaim
5 that marijuana should be regulated in a
6 manner similar to alcohol so that business
7 owners are subject to a review by the State
8 of Nevada to confirm that the business owners
9 and the business location are suitable to
10 produce or sell marijuana.

11 You're aware of this requirement; correct?

12 A What are we looking at? 453D.020?

13 Q -0203B.

14 A D did you say?

15 Q 453D.0203B.

16 A Oh, B.

17 Yes.

18 Q All right. And up there at the top it says, That
19 marijuana should be regulated in a manner similar to alcohol.
20 You're aware that that was the framework that the Nevada voters
21 provided to you as to how they expected you to administer this
22 program; is that correct?

23 A Yes.

24 Q All right. And this competitive application process
25 was the evaluation of which business owners among the existing

1 marijuana license holder should be granted a license to sell
2 marijuana; right?

3 A Wait. I'm sorry. I didn't hear you.

4 Q This competitive application process, that is the
5 evaluation by which business owners are granted a license to
6 sell marijuana in the state; right?

7 A Yes.

8 Q There's no additional criteria or additional review
9 that happens after this application process; isn't that
10 correct?

11 A Correct.

12 Q In ensuring the individuals who are licensed to sell
13 marijuana in Nevada aren't criminals and are suitable to sell
14 marijuana, it is a necessary area of your focus to carry out
15 the strong and effective regulation that the feds expect. Is
16 that a fair statement?

17 A Yes.

18 Q Of all the areas of regulation, suitability
19 requirements couldn't be neglected simply because they might be
20 inconvenient to carry out; is that correct?

21 A Correct.

22 Q Because a suitability determination is a necessary
23 part of your regulatory oversight of Nevada's marijuana
24 program; is that correct?

25 A Correct.

1 Q And we discussed this, but that suitability
2 determination, the buck stops with you; is that right?

3 A Sure.

4 Q Yeah. And when questioned to pass, the people of the
5 State of Nevada entrusted you to conduct background checks on
6 each prospective owner of a marijuana establishment; correct?

7 A Yes.

8 Q Okay. NRS 453D.200, Subsection 6, says,
9 The department shall conduct a
10 background check of each prospective owner
11 and board member of a marijuana establishment
12 license application.

13 Correct?

14 A Yes.

15 Q You're aware of that requirement?

16 A Yes.

17 Q Okay. And you're aware that when the people passed
18 that language in Question 2 you couldn't amend that statute for
19 a period of three years; is that also correct?

20 A Yeah, I think we discussed that.

21 Q Okay. But your department did not conduct background
22 checks of each prospective owner of a business license by the
23 State of Nevada to sell marijuana; correct?

24 A Say that again.

25 Q Your department did not conduct background checks of

1 each prospective owner of a business -- of a business license
2 by the State of Nevada to sell marijuana; is that true?

3 A Prospective owners?

4 Q Yeah.

5 A I would agree.

6 I mean, we do background checks of licensed -- of
7 people who get licenses.

8 THE COURT: That's not what he asked you, sir.

9 Can you ask your question again, Mr. Miller.

10 MR. MILLER: Yeah.

11 BY MR. MILLER:

12 Q The department did not conduct background checks of
13 each prospective owner of a business licensed by the State of
14 Nevada to sell marijuana; is that true?

15 A Can you reframe that question. I mean, "prospective
16 owner," they're not owners.

17 Q Let's go back, and we'll talk about "prospective
18 owners."

19 All right. People that apply for licenses are
20 prospective business owners or licensees; is that correct?

21 A Yes.

22 Q Okay. And to the extent that you review this
23 information, they could be granted conditional licenses --

24 A Yes.

25 Q -- is that correct?

1 All right. But you didn't conduct background checks
2 of each prospective licensee before issuing conditional
3 licenses, did you?

4 A I believe we did.

5 Q You believe that you conducted background checks of
6 each prospective owner?

7 A I believe so. If, you know -- the applications
8 requires fingerprinting and background checking to be submitted
9 and go through the process, a background check process.

10 Q Would it surprise you to learn that through the
11 testimony over the last few days we've learned of plenty of
12 instances of the department not conducting background checks of
13 ownership interest?

14 MR. KOCH: Objection. Misstates testimony --

15 THE COURT: Overruled.

16 We are on Day 9.

17 MR. MILLER: Sure.

18 BY MR. MILLER:

19 Q You believe that your department had conducted
20 background checks on each potential owner that applied for a --

21 THE COURT: The wording is "prospective" out of the
22 statute, the ballot question.

23 MR. MILLER: All right.

24 THE COURT: Let's use the right words.

25 / / /

1 BY MR. MILLER:

2 Q You believe that you conducted a background check of
3 each prospective owner of a business license by the State of
4 Nevada to sell marijuana?

5 MR. GRAF: Objection. Vague as to time.

6 THE COURT: Overruled.

7 MR. GRAF: Thank you.

8 THE WITNESS: Yes, that was my belief.

9 BY MR. MILLER:

10 Q You changed the phrase of the voters on the ballot in
11 Question 2 which said, Each prospective owner, to instead read
12 only ownership interests of 5 percent or more; right?

13 A Regarding background checks?

14 Q You're aware that your department passed a regulation
15 that changed the definition of each prospective owner to
16 instead read that you would only be required to background
17 check individuals whose ownership interests were 5 percent or
18 more?

19 A Yes.

20 Q And a change from conducting background checks of
21 each owner to ownerships of 5 percent or more would be a
22 significant change; right?

23 A I believe that ownership interest, 5 percent or more,
24 is regarding agent cards.

25 Q Who has to obtain an agent card?

1 A I'm sorry?

2 Q Who is required to obtain --

3 A Anyone employed.

4 Q Anyone employed. Okay. So only those individuals --

5 A Well, you're talking -- but you're talking ownership
6 transfers is what you're talking about, ownership interest;
7 right? So 5 percent or more.

8 Q No. Let me stop you. Who does the department
9 conduct background checks on?

10 A On owners --

11 THE COURT: Mr. Miller, I don't care about agent
12 cards for purposes now. I care about the application process
13 because that's what this injunctive relief hearing is. If we
14 could focus then back on the ballot question which includes
15 NRS 453D.200, and I believe we're at Section B -- or Section 6:

16 The department shall conduct a
17 background check of each prospective owner,
18 officer and board member of a marijuana
19 establishment license applicant.

20 So if we could continue to focus on that language
21 rather than who needs an agent card, because I don't really
22 care today.

23 MR. MILLER: Okay. Well, I'm --

24 THE COURT: Because I know employees and volunteers
25 need agent cards, and they're not here --

1 MR. MILLER: I'm trying to figure out how he thinks
2 they intersect, Your Honor, but I'll try to focus in on the
3 statute up here.

4 THE COURT: This could be the highlighted part that I
5 think we need to talk about.

6 MR. MILLER: Yep.

7 BY MR. MILLER:

8 Q So reading that language again, sir, it says,
9 Shall conduct a background check on each
10 prospective owner, officer and board member
11 of a marijuana establishment license
12 applicant.

13 You believe that you did that in this case; is that
14 correct?

15 A Yes.

16 Q Okay. And you believe that you did it for each
17 prospective owner of a marijuana establishment and license?

18 A Yes.

19 Q Okay. And you're aware of the regulation that was
20 passed, NAC 453D.272 --

21 (Pause in the proceedings.)

22 BY MR. MILLER:

23 Q -- NAC 453D.255. Can you read that statute.

24 A Sure.

25 (Witness reads out loud to himself.)

1 Q But you believe that the department conducted
2 background checks of each prospective owner of a marijuana
3 establishment? Before issuing -- in the confines of this
4 application; correct?

5 A You have to have more than 5 percent interest.

6 Q Okay. And now you see that I showed it to you the
7 regulation appears to show that the department will check it
8 for individuals that own over 5 percent; is that correct?

9 A Yes.

10 Q Okay. And that would be a significant change in
11 ownership interest -- and who the department conducts
12 background checks on; correct?

13 A Sure. I would say so.

14 Q Okay. Because if you receive an application that
15 lists an ownership percentage of less than 5 percent that was
16 held by an LLC, there might be no requirement under that
17 regulation that we conduct any background check on that
18 ownership interest; is that also true?

19 A Wait. Say that again.

20 Q Under that regulation, did the department check
21 ownership interests that were less than 5 percent?

22 A Do we check? Was that your question? I'm --

23 Q During this application process --

24 A Right.

25 Q -- when individuals filled out the criteria that was

1 required by the application, did your division check the
2 backgrounds of individuals holding less than 5 percent
3 ownership interest?

4 A Yeah, I don't know for sure.

5 Q But if you hadn't complied with the law to check the
6 backgrounds of those individuals, that could be a significant
7 problem; correct?

8 A Sure.

9 Q All right. Because if you hadn't complied with the
10 requirement, an ownership interest of less than 5 percent
11 could, in fact, be 100 percent held by a member of a criminal
12 organization; right?

13 A I guess it's possible.

14 Q And the fact is it's possible, and you wouldn't know
15 it because you hadn't checked the backgrounds on any of that
16 ownership interest; is that right?

17 A It's possible.

18 Q Are you aware of what a background check includes?

19 A I know what we look for.

20 Q What do you look for?

21 A We look for excluded felonies, Category -- it would
22 be equivalent to a Category A in the state of Nevada.

23 Q Just in the state of Nevada? So if an individual had
24 a felony conviction elsewhere for significant crimes, that
25 wouldn't show up through your background checks?

1 A No, I said excluded felonies that would be equivalent
2 to a Category A in the state of Nevada.

3 Q Okay. And how are those background checks performed?
4 Who does it?

5 A DPS and FBI.

6 Q Okay. And then once that information is reviewed,
7 what does your department do with it?

8 A The section reviews -- reviews to see if there's any
9 excluded felony, and if there's no excluded felony, the
10 application proceeds.

11 Q Okay. And if there is an excluded felony, what
12 happens?

13 A Well, it depends on I guess the disposition. The
14 applicant is given an opportunity to explain.

15 Q Explain? They get an opportunity to explain?

16 A Well, there's -- if there's no disposition. So if
17 there's an excluded felony and it's been totally disposed of,
18 then that individual is denied. If there's no disposition,
19 sometimes the reports come back with no disposition, so we
20 don't know if they're on probation, parole or whatnot, or, you
21 know, it totally changed.

22 The applicant is given an opportunity to provide
23 documentation as to the status of that felony.

24 Q Okay. But for ownership interest less than
25 5 percent, if an individual had any of those excluded felonies

1 that would have otherwise prevented them from having a license
2 in the state, you wouldn't know; is that right?

3 A Right.

4 Q Because you didn't check?

5 A Right.

6 Q And that could be a very significant difference in
7 who you may want to issue a license to in the state; is that
8 correct?

9 A Sure.

10 Q And if you don't check ownership interests and you
11 don't ensure that they didn't have any of the, you know, red
12 flags that would suggest they'd be unsuitable to hold a
13 license, you could have an entire ownership interest that could
14 be held by criminal organizations in the state; is that right?

15 A It's possible.

16 Q Right. Because under the regulation that your
17 department proposed, we could have an application to sell
18 marijuana for up to 20 different holders -- 20 different owners
19 holding less than 5 percent who weren't background checked;
20 right?

21 A Say that again.

22 Q We talked about the fact that if there was an
23 ownership interest that held less than 5 percent, your
24 department doesn't background check them; right?

25 A Right.

1 Q Okay. So if 20 different people came in and said we
2 own, we're prospective owners of this marijuana license, we
3 want to apply, you wouldn't check any of those 20; is that
4 correct?

5 A I guess not.

6 Q All right. And if you didn't check any of those 20
7 different owners and confirm their background as required by
8 law, basically the entire organization could be held by a
9 criminal organization, and your department wouldn't know about
10 it; is that true?

11 A It's possible.

12 Q So you're telling me that the regulatory process that
13 you set up could have allowed for Nevada LLCs numbered
14 1 through 20 that applied for a marijuana license in this state
15 all indicating that they had ownership interests under
16 5 percent had been members of the Sinaloa Cartel, and yet the
17 Nevada Department of Taxation wouldn't have known about it?

18 A I guess under the circumstances, yeah.

19 Q Okay. So as you sit here today, you can't tell us
20 whether or not you've granted any conditional licenses to
21 members of the Sinaloa Cartel?

22 A I don't know.

23 Q You don't know whether or not you granted the
24 licenses?

25 A Well, I don't -- I'd have to go back and see if that

1 scenario exists. I mean, I don't -- I don't know that that
2 scenario exists.

3 Q As you sit here today, you can't tell us -- you've
4 told us that you didn't conduct background checks on each
5 individual; right?

6 A As I sit here today, I tell you that I don't know if
7 that scenario exists. I'd have to go back and look.

8 Q Okay. But that's not the question I asked.

9 THE COURT: So, Mr. Miller, can I interrupt you for a
10 second.

11 MR. MILLER: Yeah.

12 THE COURT: Because we're going to take a morning
13 break in about 10 minutes.

14 MR. MILLER: Yeah.

15 THE COURT: Sir, can you explain to me why the
16 department thought it was a good idea to change the language of
17 the ballot question which said that you had to check each
18 prospective owner's background and change it to anyone who held
19 a 5 percent interest or more?

20 THE WITNESS: I'm not sure, Your Honor. I mean, I
21 think there was some -- there may have been some concern of you
22 have companies that have hundreds and hundreds of shareholders
23 or owners that, you know, own .01 percent of a business, and
24 there's no real way to conduct background checks on hundreds,
25 maybe thousands of individuals, especially in a 90-day period.

1 THE COURT: So did you think the "shall" language in
2 the ballot question was not mandatory?

3 THE WITNESS: No, I didn't think that.

4 THE COURT: Okay. How did you define "owner" in
5 implementing the regulations and the duties you had under the
6 ballot question?

7 THE WITNESS: Well, I think that's where maybe the
8 5 percent came in. I don't -- I don't recall exactly how, you
9 know, if we made that determination on defining exactly what a
10 owner is.

11 THE COURT: How did you define "officer" for purpose
12 of the background check?

13 THE WITNESS: So officer, however they listed -- the
14 applicant listed the individual, whether it was an officer of
15 the corporation or not.

16 THE COURT: And how did you define "board member" in
17 order to implement the background check requirement of Ballot
18 Question 2?

19 THE WITNESS: Same thing, as however the applicant
20 listed in their application.

21 THE COURT: So you took the applicants at their word?

22 THE WITNESS: Yes, ma'am.

23 THE COURT: How did you undertake the obligation that
24 the department had to determine that the application was
25 complete prior to it being reviewed?

1 THE WITNESS: I'm sorry. Can you say that again,
2 Your Honor.

3 THE COURT: So you were required to determine the
4 application was complete before starting the review process.
5 How did you do that?

6 THE WITNESS: Yeah, I don't -- I don't know how my
7 staff would review. I would assume --

8 THE COURT: So we should defer to the people who've
9 come already?

10 THE WITNESS: Yes, ma'am. I mean --

11 THE COURT: Mr. Gilbert?

12 THE WITNESS: Yeah. I didn't have any -- any
13 involvement in that process.

14 THE COURT: That's fine. You can tell me that was
15 below your pay grade, and you delegated it to him to make sure
16 it happened, and that's okay. I'll take it.

17 THE WITNESS: That's basically what it is, Your
18 Honor.

19 THE COURT: All right, guys. We're going to take a
20 15-minute recess and resume. This is not a requested break.

21 Sorry for interrupting, Mr. Miller, but I was trying
22 to get on track for what I need to know.

23 THE WITNESS: I understand.

24 (Proceedings recessed at 10:23 a.m., until 10:35 a.m.)

25 THE COURT: Since Mr. Rulis is here, we're going to

1 start without Mr. Kemp.

2 Go. You're up.

3 BY MR. MILLER:

4 Q We've heard previous testimony on this, but if a
5 prospective licensee included an ownership interest and
6 included a publicly traded corporation, your department would
7 not have conducted a background check on the ownership interest
8 of that -- that entity; is that correct?

9 A That's correct for anyone under 5 percent. It's just
10 impossible to do.

11 Q So you're saying that you conduct background checks
12 on publicly traded companies for -- for publicly traded
13 companies with ownership over 5 percent?

14 A Yeah, I'm not sure it's 5 percent, 3 percent. I
15 think it's 5 percent owners, officers, and board members.

16 Q Is there a requirement in the Department to check the
17 backgrounds of ownership interests of publicly traded companies
18 that are -- that hold an ownership interest in a prospective
19 license?

20 A Publicly traded companies, unfortunately, weren't
21 addressed in the regulations or the law, for that matter.

22 Q And so you're essentially leaving it up to the
23 applicant's determination of who they want to include and who
24 they want to have background checked; is that right?

25 A Yes.

1 Q And if they don't list an ownership interest, you
2 wouldn't know?

3 A Would not know, yes.

4 Q And so if they were an ownership interest that --
5 within a publicly traded company, that held a significant
6 portion, at least 50 percent of a prospective licensee, you
7 wouldn't check their background?

8 A If someone held 50 percent?

9 Q Let's say an applicant comes in and they list that
10 this company, which is publicly traded, owns 50 percent of the
11 company that's applying for a license. If they don't list any
12 ownership interest of that publicly traded company, you
13 wouldn't check it; right?

14 A I believe we check the owners and officers and board
15 members of that company that owns 50 percent if they --
16 individuals own 5 percent or more.

17 Q And how would you know to check that if they don't
18 list it?

19 A I believe my staff asks. They say -- if there's a --
20 from what I understand, you're saying there's a company, and
21 then there's another company that owns 50 percent, but they
22 don't list the individual owners, officers, or board members.
23 Is that what you're saying?

24 Q Correct.

25 A Right. So at that point, I believe my staff then

1 asks who these owners, officers, or board members here that own
2 5 percent or more.

3 Q You believe that your staff would have, then,
4 rejected an application if it didn't appropriately list an
5 ownership interest of over 5 percent or more of a publicly
6 traded company?

7 A I don't know -- well, and when we do an ownership
8 transfer on the application, I don't think they would have
9 asked.

10 Q I'm not asking about an ownership transfer on an
11 application. I'm talking about the application itself.

12 A Okay. So, no. No.

13 Q It's a no?

14 A Yeah. No, I don't think they would have asked.

15 Q So it would have been left up to the individual
16 applicant. And if they didn't provide that information, then
17 that ownership interest wouldn't have been background checked;
18 is that right?

19 A Probably, yeah.

20 Q And with respect to those publicly traded companies,
21 there's no requirement that the licensed entity maintain a list
22 of shareholders for inspection by your department; right?

23 A No.

24 Q And we've heard testimony about out-of-state
25 ownership interest. There's no additional requirements that

1 apply to ownerships -- ownership interests that are
2 out-of-state compared to those that are in-state; correct?

3 A No.

4 Q And we've heard testimony about foreign-owned
5 ownership interests. There are no additional requirements
6 related to ownership interests that are in foreign countries
7 either; right?

8 A No.

9 Q So if an ownership interest were held by a publicly
10 traded company -- scratch that.

11 With respect to publicly traded corporations, if you
12 don't know who the shareholders are and it wasn't disclosed to
13 you, how can the Department be sure that the regulatory
14 provisions against monopolies aren't being violated?

15 A If we don't know who the shareholders are, you're --
16 see, publicly traded companies' shareholders, I guess, are
17 considered owners as well. A problem with publicly traded
18 companies, like I said, they're not addressed in statute.
19 They're not addressed in regulations. The problems -- the
20 problem we have is those shareholders change by the minute,
21 possibly -- they can, by the second, as shares are traded on
22 the market. It would be impossible for us to, you know, run
23 background checks and do all that on all those individuals that
24 own shares. So --

25 Q Well, you said it wasn't addressed in the statute.

1 The voters adhere to that statute; right?

2 A The initiative doesn't have a whole lot to go on.

3 Q Right. So it was left to the Department to enact
4 regulations; is that correct?

5 A Yes.

6 Q And you could have put in those regulations areas
7 that may have defined how you would deal with publicly traded
8 corporations; is that correct?

9 A Sure, we didn't -- we didn't anticipate this.

10 Q Okay. All right. And with respect to out-of-state
11 interests, you said that an ownership interest that may be held
12 by foreign -- by companies that are domiciled in other
13 countries, that was a concern that was identified by the ballot
14 question itself; is that correct? Are you familiar with that?

15 A No.

16 Q Okay. Can we pull up the ballot, page 20.

17 This is the wrong page, but let me -- well, clearly
18 the voters were concerned -- it was a concern of the language
19 on the ballot question on the arguments that they were
20 concerned with cartels being able to hide in plain sight;
21 correct? Do you read that from the ballot language, the
22 arguments for or against?

23 "Legalization has done nothing in the black market in
24 Colorado and it's even allowed Mexican cartels to hide in plain
25 sight."

1 A Okay.

2 Q Clearly, some of the (indiscernible) were concerned
3 with cartels being involved in their open industry; is that
4 right?

5 A Sure, there was some concern, I guess, for the people
6 arguing against.

7 Q Okay. Sir, could you have refused to take
8 applications from publicly traded corporations that didn't
9 properly identify their ownership interest?

10 A I don't believe so.

11 Q Why not?

12 A There's no prohibition in the statute or regulation
13 that says publicly traded companies can't apply.

14 Q And so if it was clear to the Department that an
15 applicant had submitted an application but had not
16 appropriately identified their ownership interest, you couldn't
17 have refused that application?

18 A No, I don't think -- I think with that, we have an
19 obligation to receive all applications.

20 Q Okay. So you would have just taken the application
21 that didn't identify the appropriate ownership interest and
22 pass it on to evaluators for the appropriate scoring?

23 A I would assume.

24 Q And if that applicant has scored the highest, you
25 would have issued them a conditional license?

1 A Yes.

2 Q And when you had the opportunity, you said that you
3 just didn't anticipate that this could have been an issue
4 regarding suitability. We discussed the fact earlier that the
5 language itself, the voters told you to regulate marijuana in a
6 manner similar to alcohol; is that right?

7 A Yes.

8 Q And when you were carrying out these regulations and
9 going through that process of developing them, did you ever
10 meet with anybody that regulated alcohol to determine how they
11 dealt with these issues?

12 A Not outside the Department. I mean, we regulate
13 alcohol to an extent.

14 Q Okay. Did you meet with people inside the Department
15 in order to determine how they review applications and how they
16 look at ownership interests?

17 A Well, we have the executive team which knows how
18 alcohol is regulated within the Department.

19 Q And so did they participate in the process of
20 drafting the regulations?

21 A Yes.

22 Q And so they could have included provisions that would
23 have applied to the regulation of alcohol and provided a little
24 further clarity; right?

25 A Well, it depends. You know, alcohol in this state is

1 on a three-tier system. I mean, to what extent do you -- are
2 you going to regulate marijuana like alcohol, similar to
3 alcohol but not like alcohol.

4 Q Right. All right. Well, can you show Exhibit 228.

5 THE COURT: Any objection?

6 MR. MILLER: It's Department of Tax's liquor license
7 application.

8 MR. SHEVORSKI: No objection.

9 THE COURT: Be admitted.

10 (Plaintiffs' Exhibit Number 228 admitted)

11 MR. MILLER: Pull up 14.

12 BY MR. MILLER:

13 Q See that discretion up at the top? "List all owners,
14 officers, members, partners. Attach additional sheets if
15 needed"?

16 A Yes.

17 Q The tax form within your department that regulates
18 alcohol requires that you list all owners; is that right?

19 A It requires what?

20 Q That you list all owners.

21 A Yes.

22 Q But you didn't follow that regulatory model; right?

23 A Well, we say list owners.

24 Q You say list all owners over 5 percent; is that
25 right?

1 A Yes.

2 Q The department that regulates alcohol says it lists
3 all owners; is that correct?

4 A Yes.

5 Q So you didn't follow that model?

6 A No.

7 Q And are you aware that the determination of
8 suitability in the confines of alcohol is also reviewed by
9 accountings but issued like a license is?

10 A Yes.

11 Q All right. Did your division meet with any of those
12 individuals, to your knowledge, or your department meet with
13 any individuals within that area, to your knowledge, in order
14 to determine how they regulate?

15 A Not to my knowledge.

16 Q Are you aware that Clark County requires disclosure
17 of all owners or members, including percentages of those
18 companies held and any investment amount?

19 A No.

20 Q And that if corporation (indiscernible) is a publicly
21 traded corporation, the applicant is required to provide a copy
22 of their last annual report. Are you aware of that?

23 A No.

24 Q And your division clearly didn't request that
25 information; right?

1 A Not to my knowledge.

2 Q But nothing would have prevented you from adopting a
3 regulation that would have required that information; correct?

4 A No.

5 Q All right. Pull up Exhibit 230.

6 THE CLERK: Proposed.

7 THE COURT: Any objection?

8 MR. SHEVORSKI: One second, Your Honor.

9 It's the Clark County Priviledged License
10 Application.

11 MR. SHEVORSKI: No objection.

12 THE COURT: Be admitted. A blank one?

13 MR. MILLER: Yes.

14 THE COURT: It can be rather long when completed.

15 MR. MILLER: Good point, Judge.

16 (Plaintiffs' Exhibit Number 230 admitted)

17 BY MR. MILLER:

18 Q Page 3. Exhibit 230, page 3. It says, "If the
19 operating entity is owned/managed by legal entities other than
20 individuals, provide documentation that evidence the ownership
21 and management of all holding/parent entities."

22 A I can't see where you're reading. I can't see it.

23 MR. MILLER: Shane, did you find that?

24 SHANE: Not for what part you're on here.

25 MR. MILLER: It's down here under additional

1 documents, second check box, third criteria down, I believe --
2 or fourth check box. There we go.

3 BY MR. MILLER:

4 Q Can you read that?

5 A Okay.

6 Q You didn't require that level of detail on your
7 applications either; correct?

8 A No.

9 Q If you can turn to page 12.

10 "Ownership: Provide information for all individuals
11 or entities that have an ownership share in this business. The
12 form must account for 100 percent of the capital invested in
13 this business. If additional space is required, please use
14 additional forms.

15 "For LLCs, limited partnerships, or publicly traded
16 corporations with numerous minor investors, individual
17 ownership interest of less than 1 percent may be grouped as one
18 item provided an explanation is provided below. Use additional
19 sheets as necessary. Provide stock certificates or other legal
20 proof of ownership for each entity or individual
21 (indiscernible)."

22 Now, nothing would have prevented you from reviewing
23 the application of a Clark County liquor license, right, and
24 incorporating those instructions and these requirements into
25 your application; correct?

1 A Correct.

2 Q Okay. Are you also aware that Clark County requires
3 that any privileged businesses that are owned by an entity
4 registered with the Secretary of State are required to complete
5 a corporate financial questionnaire, which is submitted to the
6 Las Vegas Metropolitan Police Department? No?

7 A No.

8 Q You're probably not familiar with the requirements of
9 the Montana liquor license?

10 A Right. Not familiar.

11 Q Okay. Metro's background check that would have been
12 conducted on -- as part of the corporate financial
13 questionnaire includes legal entities that may hold ownership
14 interests of the entity that's being licensed.

15 You could have asked the Metro whether or not you
16 could have participated in that program, but, to your
17 knowledge, the Department didn't do that; right?

18 A Right.

19 Q All right. I'm showing you Exhibit 229.

20 THE CLERK: Proposed.

21 THE COURT: Any objection to 229?

22 MR. MILLER: It's Metro's questionnaire for legal
23 entities.

24 MR. SHEVORSKI: No objection, Your Honor.

25 THE COURT: Be admitted.

1 (Plaintiffs' Exhibit Number 229 admitted)

2 BY MR. MILLER:

3 Q So when you're speaking about the difficulties of
4 obtaining information from publicly traded corporations or even
5 entities that (indiscernible) ownership interest, there clearly
6 appears to be a model for this in the state of Nevada; is that
7 correct?

8 A Sure.

9 Q Okay. And Metro requires substantial information as
10 part of the check they perform, including a copy of the
11 entity's past three years of federal income tax filings and the
12 last three months of bank statements.

13 Will you read page 1, Section 7.

14 It also requires a series of disclosures. "If you're
15 a publicly traded corporation, has the corporation ever been
16 investigated by the SEC? If yes, please list when, details,
17 and sanctions occurring."

18 You didn't require any of that information; right?

19 A Right.

20 Q All right. Page 1, Section 9: "Does the corporation
21 own or control any assets or liabilities located outside the
22 United States? Yes or no."

23 You didn't require disclosure of that information;
24 right?

25 A Right.

1 Q And then page 2, "Copy of the original Articles of
2 Incorporation or Articles of Organization, any applicable
3 amendments, operating agreements, list of current corporate
4 officers, members, managers, AS file with the Nevada Secretary
5 of State. List of all owners and members or manager, percent
6 the company held, the investment (indiscernible), most recent
7 financial statements, most recent minutes, income tax returns
8 for the past three years. If the corporation applied as a
9 publicly traded corporation, please provide a copy of the last
10 annual report."

11 That's a substantial amount of information and it's
12 fairly detailed; right?

13 A Right.

14 Q And that wouldn't have been difficult to obtain;
15 right? You could look on the website and obtain that?

16 A I wouldn't think so.

17 Q All right. Under the -- we talked about the fact the
18 new regulatory structure. Marijuana will be regulated in a
19 manner more similar to gaming; right?

20 A (No audible response.)

21 Q Are you aware that in Nevada, the gaming ownership
22 interests are subject to extensive review of suitability?

23 A Yes.

24 Q I'm going to read you NRS 463.170, qualifications for
25 license: Applicant, to receive a license -- move on here --

1 must be found suitable, must be a person of good character,
2 honesty, integrity, a person's whose prior activities, criminal
3 record, if any, meet the needs of the states, in all other
4 respects, qualified to be licensed or found suitable.

5 And then NRS 463.5735. This one provides individual
6 licensing and registration of members, directors, managers, and
7 other persons. And every member and transferee of a member's
8 interest with more than 5 percent ownership interest must be
9 licensed individually. All members seeking to hold a 5 percent
10 or less ownership interest -- skip down to the third line --
11 must register with the board, submit to the board's
12 jurisdiction.

13 Are you aware that per that provision, that the
14 gaming authorities in the state for ownership interest even
15 less than 5 percent conduct a fairly significant investigation?

16 A Yeah, I'm familiar that they do some in-depth
17 suitability.

18 Q Even for ownership interest of less than 5 percent;
19 is that right?

20 A Yes.

21 Q And this statute is how gaming is -- how gaming
22 regulates ownership interest of more than 5 percent appears --
23 appear there; is that correct?

24 A I'm sorry.

25 Q It appears to apply to everyone; is that correct?

1 Every member with more than a 5 percent ownership interest must
2 be licensed individually?

3 A Appears so, yeah.

4 MR. SHEVORSKI: Counsel, what exhibit is that?

5 MR. MILLER: It's not an exhibit.

6 THE COURT: It's a statute.

7 MR. SHEVORSKI: It's a statute. Fair enough, Your
8 Honor.

9 THE COURT: 463.5735.

10 BY MR. MILLER:

11 Q NRS 463.490. Now this one is the qualifications for
12 state gaming license for corporations other than publicly
13 traded corporations. Look at the requirements under
14 subsection 4: Ownership interest that are business entities
15 that aren't publicly traded corporations prior to maintain a
16 ledger in the principal office of the corporation which
17 reflects the ownership of every class, security, and be
18 available for inspection by the board, commission, and other
19 authorizations at all times without (indiscernible).

20 Now, you didn't adopt any provisions like that, did
21 you?

22 A No.

23 Q And if you had, maybe we would have access to
24 information as to who owns the marijuana licenses in this
25 state; is that correct?

1 A Right, we have licenses.

2 Q All right. NRS 463.635. Publicly traded corporation
3 owning or controlling the applicant or licensee: If a
4 corporation -- well, we'll skip down to the subsection A --
5 maintains a ledger in the principal office of its subsidiary,
6 which is licensed to conduct gaming in this state, must reflect
7 the ownership of record, ledger may individually consist of a
8 copy of its latest list of equity security holders and
9 thereafter be maintained by adding a copy. Any -- skip down
10 way at the bottom -- any owner of any interest, including
11 publicly traded stockholders, can be subject to suitability.

12 Clearly, you didn't impose any of those kind of
13 requirements either; right?

14 A Right.

15 Q All right. NRS 463.643: Suitability of persons
16 acquiring beneficial ownership of any voting security or
17 beneficial or record ownership of any nonvoting security or
18 debt security in publicly traded corporations.

19 Every person that acquires, directly or indirectly,
20 beneficial ownership of any voting security -- and then under
21 (b) you'll see that includes -- in a publicly traded
22 corporation, which it's required to be registered in the state,
23 holds more than 5 percent, must notify the Department within
24 ten days of acquiring that ownership interest and be subject to
25 the suitability determination.

1 So there appears to be a fairly substantial body of
2 statutes here that do, in fact, govern these ownership
3 interests; is that correct?

4 A Yes.

5 Q All right. And you didn't include any of those
6 models when you went through your regulatory process; is that
7 also true?

8 A That's true at that time, right.

9 Q Even though you were required to regulate marijuana
10 like alcohol?

11 A Similar to alcohol.

12 Q Similar to alcohol. You expect the foreign
13 companies, you said, that your office also didn't -- your
14 department also didn't impose any additional requirements.

15 NRS 463.627: Registration of corporation of another
16 country: A corporation or other legal entity which is
17 organized under the laws of the state of the country must
18 submit an application to the board. The application must
19 provide the board with information showing that the applicant's
20 business activities are regulated by a government authority of
21 the foreign country in a manner which will prevent those
22 activities from posing any threats that control the gaming of
23 this state.

24 Clearly, you didn't impose any of those kind of
25 requirements either; right?

1 A Right.

2 Q All right. And yet voters were concerned with
3 out-of-state owners. When we turn back to the ballot on
4 page 19 -- oh, sorry. Not that. The ballot, Plaintiff's
5 Exhibit 19, the ballot -- the State's got it in their exhibits
6 also.

7 THE COURT: 2020.

8 MR. MILLER: 2020.

9 BY MR. MILLER:

10 Q (Indiscernible) passes. Vote no on Question 2. It's
11 bad for Nevada children, bad for Nevada families, and bad for
12 Nevada taxpayers. Question 2 is about one thing: Making
13 out-of-state pot companies rich at your expense.

14 So we also previously discussed that the FinCEN
15 guidance given to the institutions on how to comply with the
16 Cole memo. I want to read to you page 6 of that exhibit, which
17 is -- have I got the wrong exhibit number?

18 THE COURT: 263.

19 BY MR. MILLER:

20 Q 263.

21 A It's the one with bumps; right?

22 Q Yeah. Page 6, it says, under these -- oh, no, no,
23 not the Cole memo. The FinCEN guidelines. 225, page 6. Here
24 are these red flags that we talked about earlier, where if any
25 of these areas are identified on financial transactions, the

1 financial institution should (indiscernible) suspicious
2 activities report to other agencies who then may be reviewed by
3 federal authorities. The owner or manager of marijuana related
4 business reside outside of the state in which the business is
5 located.

6 Clearly there is some regulatory models there, right,
7 with attached safeguards that could have protected Nevada
8 against potential violations that would have alerted the
9 federal authorities, but we don't appear to have any of those
10 in our framework; is that correct?

11 A Correct.

12 Q Even though those factors would draw additional
13 attention under Nevada's regulatory structure, your division
14 imposed no such safeguard; right?

15 A Right.

16 Q All right. Other than NRS 453D.255, which relaxed
17 the law on background checks, you imposed no additional
18 safeguards to protect suitability concerns; am I right about
19 that?

20 A Can you pull 255?

21 Q NRS -- sorry, NAC 453D.255, which is the statute we
22 referenced earlier that deals with ownership interest over
23 5 percent --

24 A Oh, okay.

25 Q -- which relaxed the ownership interest.

1 A Okay.

2 Q Other than that statute, other than that regulation,
3 you impose no additional safeguards to protect against
4 suitability concerns that the voters had; right?

5 A Right.

6 Q And compliance with regulations should also be an
7 important factor in evaluating the licenses once we get past
8 the background checks; right?

9 A Say that again.

10 Q Once we get past the background checks who those
11 apply to, then the applicants would have been thrown
12 (indiscernible) evaluated; is that correct?

13 A Right. They go to -- they move on to the evaluation.

14 Q To the evaluation. Compliance -- and a licensee's
15 compliance with regulations and their history of compliance
16 should be an important criteria in evaluating those licensees;
17 correct?

18 A Yes.

19 Q Yeah. And all of the applicants had experience in
20 Nevada; correct?

21 A Yes.

22 Q And, therefore, had experience in complying with your
23 regulations?

24 A Somewhat. I mean, we had just dropped
25 200-and-some-odd pages in February. Not all of the -- we also

1 gave them time to implement certain things in the regulations.

2 Q Did the applicants have experience in complying with
3 your department's regulations before they apply?

4 A Yeah -- yes.

5 Q And compliance with the regulations is an important
6 and necessary function of carrying out strong and effective
7 regulations such as those identified in the Cole memo; right?

8 A Yes.

9 Q And I think you indicated in a recent Marijuana
10 Advisory Commission Meeting that the State had assessed 603 --
11 \$603,250 in fines and collected \$181,500 of that, and that you
12 conducted 300 and -- 234 investigations in your first year of
13 legal recreational marijuana sales. Does that sound accurate?

14 A Yes.

15 Q And the division maintains records of those
16 violations; correct?

17 A Yes.

18 Q And as I understand it, you had four different
19 categories of violations, from category 1 being the most
20 serious, which can be --

21 A There's five.

22 Q Huh?

23 A I think there's five.

24 Q Five, okay. Five categories, category 1 being the
25 most serious and you can revoke a license for a violation of

1 that category; right?

2 A Yes.

3 Q The category 5, which are the grounds that are
4 inconsistent with the regulation of sale of marijuana; right?

5 A Category 5?

6 Q Yeah, category 5.

7 A Yeah, I'd have to look.

8 Q It's the lowest level; is that correct?

9 A Right.

10 Q And a licensee's history of compliance or
11 noncompliance would be a strong indicator of whether the
12 licensee might comply in the future; right?

13 A Yes.

14 Q So if a licensee had a horrible track record of
15 compliance, the regulatory problems could compound if that
16 licensee was granted more licenses; right?

17 A If they haven't corrected the problems, yes.

18 Q Well, if you've got -- if you gave a license to your
19 worst offender out there, those problems could just compound if
20 you gave them one or more licenses; right?

21 A I guess, I -- if they did the corrective action
22 approved by the Department and the issues resolved, then they
23 won't necessarily compound.

24 Q Are you telling me that we shouldn't look at that
25 criteria? I mean, that that shouldn't be a point of

1 evaluation? We shouldn't look at who the worst actors were
2 historically and who was the model citizen, that --

3 A No, I didn't say that.

4 Q Right.

5 A I said if they took the corrective action, then that
6 not necessarily will compound the problem if it's taken care
7 of.

8 Q In fact, the regulations you adopted did require you
9 to evaluate the applicant's compliance in operating marijuana
10 establishments; correct?

11 A Yes.

12 Q Pull up NAC 453D.272(g). Where the owners, officers,
13 or board members of the proposed marijuana establishment have
14 direct experience of the operation of a medical marijuana
15 establishment or marijuana establishment in this state and
16 they've demonstrated a record of operating such an
17 establishment in compliance with the laws and regulations of
18 the state for an adequate period of time to demonstrate
19 success.

20 And that section results from the directive given to
21 you by the voters in NRS 453D.200; right?

22 A Yes.

23 Q That the qualifications be directly and
24 demonstratively related to the operation of a marijuana
25 establishment; right?

1 A Yes.

2 Q And then also that all of the statutes that we read
3 previously about imposing appropriate regulatory controls for
4 marijuana; is that correct?

5 A Yes.

6 Q Read NAC 453D.272. We'll talk about compliance
7 again.

8 That the Department will rank the applications from
9 first to last in order from -- based on compliance with the
10 applicable provisions of this chapter and Chapter 453D of the
11 NRS.

12 So the regulations require the Department to rate the
13 applications based on compliance and provisions of the chapter
14 and then on the content of the criteria identified in the other
15 criteria, right, so it's just diversity, taxes, et cetera?

16 A So can you repeat the question?

17 Q Yeah. That provision that explains to you how you're
18 going to rank the applications. It says, You'll rank the
19 applications from first to last based on compliance with the
20 provisions of this chapter --

21 A Yes.

22 Q -- and on the content of the regulation and the
23 content of the application relating to it and then it goes on
24 to list that criteria; right?

25 A Yes.

1 Q Yet when you provided the criteria for ranking
2 applications with the application itself, you made no mention
3 of considering a record of compliance whatsoever, did you?

4 A Wait. What? Say that again.

5 Q When you provided the criteria for ranking
6 applications within the application itself, you made no mention
7 of considering a record of compliance whatsoever, did you?

8 A I don't know.

9 Q You don't know? Okay. Can we show Exhibit 5,
10 page 18. Section 6.2. This appears to, more or less, cut and
11 paste from the regulations; is that a fair assessment? It just
12 says how you're going to rank the applications?

13 A Yeah, but I don't know if it was cut and paste
14 because this references to the LCB file number, so I don't
15 know.

16 Q Can you find anywhere in there where it says that
17 you're going to review an entity's history of compliance?

18 A Yeah, I don't see it there.

19 Q It's not in there; right?

20 A No.

21 Q And when you provided instructions to the applicants,
22 you similarly made no mention of where they could even detail
23 their history of compliance with marijuana on the regulations;
24 right?

25 A Right.

1 Q So Exhibit 5, page 11 and 12. In the instructions
2 you provided the applicants, you indicated on the application
3 that they provide a 750-word narrative but then provided this
4 description.

5 Can we go to 5.2.10.5.2. Any previous experience at
6 operating other businesses or nonprofit organizations including
7 marijuana industry experience.

8 That doesn't include the entire second half of that
9 regulation about compliance, does it?

10 A I'm sorry. Doesn't include what?

11 Q The entire section that we referenced earlier, where
12 you're supposed to consider and provide information about
13 compliance. It's entirely left out of the instructions, isn't
14 it?

15 A Yeah, that doesn't include that.

16 Q Okay. And you couldn't find it anywhere else in the
17 instructions, could you?

18 A No.

19 Q All right. So if an applicant wanted to provide
20 information about their history of the compliance, they were
21 left to guess as to where to include that information?

22 A Probably, yeah.

23 Q If they were left to guess and wanted to include it
24 anyway, they'd have to do so even though the instructions,
25 though, indicate that you're going to consider that criteria at

1 all; right?

2 A Right.

3 Q And, in fact, an applicant's track record of
4 compliance with the laws and regulations in the state for an
5 adequate period of time to demonstrate such success, as was
6 required by the regulation, wasn't even evaluated as part of
7 the application scoring; right?

8 A Wait. Say that again.

9 Q An applicant's track record of compliance with the
10 laws and regulations in the state for an adequate period of
11 time to demonstrate success.

12 Let's go back just so you have it in front of you
13 because this is important. NAC 453.272(g). Not the
14 application. I want to pull up the regulation,
15 NAC 453D.272(g). So it says -- it's got the part about
16 experience. Then see where it says,

17 And have demonstrated a record of
18 operating such an establishment in compliance
19 with the laws and regulations of this state
20 for an adequate period of time to demonstrate
21 success.

22 Do you see that?

23 A Yes.

24 Q So that was required to be evaluated by your
25 department in ranking the applications for its (indiscernible);

1 correct?

2 A Yes.

3 Q But it wasn't evaluated at all; right?

4 A I don't believe it made it -- it was part of the
5 criteria.

6 Q The evaluators won't -- provided with evaluation
7 illness to consider as part of their scoring; right?

8 A Yes.

9 Q And so the evaluators would have only taken into
10 consideration the illness that you provided them; right?

11 A Yes.

12 Q So if it wasn't in there, the evaluators would not
13 have evaluated that; correct?

14 A Correct.

15 Q Let's read Exhibit 7. You see here that, under the
16 criteria itself, does talk about a narrative description not to
17 exceed 750 words and a résumé such as -- skip to the bottom --
18 any demonstrated knowledge, such as the experience part we're
19 talking about, and it demonstrated a record of operating such
20 an establishment in compliance with the laws and regulations of
21 the state for an adequate period of time to demonstrate success
22 in the compassionate use of marijuana to treat conditions.

23 That last section clearly shouldn't apply; right?

24 A Can you enlarge that a little bit?

25 Q I don't know. We're not looking at the compliance of

1 the laws and regulations of this state in the confines of a
2 recreational marijuana application for an adequate period of
3 time to demonstrate success in the compassionate use of
4 marijuana to treat conditions.

5 That's my question. You can't read this?

6 A No, I can't --

7 Q We can pull up the exhibit if we have to.

8 A Can you enlarge it?

9 Q It's -- let's see.

10 A I think it's that last part, but I can't -- okay. Is
11 there more to that on the next page?

12 Q That's it. Oh, yeah. No.

13 A No, just a couple -- okay. So what -- your question?

14 Q First off, that's the criteria within the statute;
15 right?

16 A Yes.

17 Q You're familiar with it generally -- you're familiar
18 with it generally --

19 A Yes.

20 Q -- to the criteria listed on the left? Just let me
21 finish.

22 A Right.

23 Q It's listed on the left-hand side. It recites the
24 regulation that's supposed to apply.

25 A Yes.

1 Q All right. The last provision: Compliance with the
2 laws and regulations of the state for an adequate period of
3 time to demonstrate success on the compassionate use of
4 marijuana to treat conditions.

5 That's not accurate?

6 A I don't see where it says that, compassionate use of
7 marijuana.

8 Q It's cut off. Are there different versions of the
9 evaluation criteria, sir?

10 A Not that I know of.

11 Q Okay.

12 A Other than the, you know, the evaluation --

13 Q Okay.

14 A -- criteria used on a medical application.

15 Q Wrong page. Can we get to the page number of the
16 criteria, No. 4. There it is.

17 Any demonstrated knowledge or expertise. So they do
18 recite the statute, is that right, but not accurately? Do you
19 agree that provision there isn't the same as the regulation we
20 just read?

21 A Right. It's not -- it's not entirely the same.

22 Q Demonstrating for an adequate period of time a
23 history of compliance demonstrated from success from the
24 compassionate use of marijuana to treat conditions.

25 A All right. It's not --

1 Q It shouldn't be applicable at all; right?

2 A No.

3 Q Because that was pulled from the medical --

4 A Yes.

5 Q Can we read the medical application, which is
6 Exhibit 2014, page 21 and 22. Sorry. 5002, Exhibit 5002, page
7 21 and 22. Find the instructions. Find the instructions which
8 is -- where it identifies 453A.3284. Do you see there? Any
9 demonstrated knowledge or expertise on the part of the persons
10 who are proposed to be owners, officers, or board members of
11 the proposed medical marijuana establishment with respect to
12 the compassionate use of marijuana to treat medical conditions.

13 A I'm sorry. I missed the question there.

14 Q You see that; right?

15 A Right, I see that.

16 Q Okay. It appears that you just pulled the provisions
17 from the 2014 application and pulled it into the 2018
18 application; is that correct?

19 A Appears that way.

20 Q Okay. And if you can jump back to Exhibit 7, page 4.
21 Now this is the section that would have essentially provided a
22 model answer to the evaluators under that 750-word essay;
23 correct?

24 A Yes.

25 Q Okay. It says, An excellent response would include

1 the following: Extensive knowledge of the marijuana industry,
2 as demonstrated, and prior experience running marijuana
3 establishments as indicated.

4 Sir, that excellent response, the model answer that
5 you provided the evaluators, doesn't reflect the criteria in
6 the regulation that we read at all, does it?

7 A In reference to the --

8 Q Yeah, can we pull up the side-by-side --

9 A Yeah.

10 Q -- just so you can look and see if he thinks that
11 these match up. NAC 453D.272(g). Is it cut off? We
12 can't show the full statute?

13 THE COURT: The reg is on two pages on yours. Mine,
14 not so much. Mine's continuous.

15 MR. MILLER: There we go. Technology. If I had
16 (indiscernible), it wouldn't have been a problem.

17 BY MR. MILLER:

18 Q Do you see this here, sir? So in the screen below is
19 the regulation of the criteria that the Department was supposed
20 to, by law, evaluate these applications. And above is the
21 model answer for that 750-word essay that was supposed to
22 evaluate that criteria. That model answer doesn't reflect the
23 criteria in NAC 453D.272(g) at all; right?

24 A I believe it does to some extent.

25 Q Well, to what extent do you think it reflects the

1 criteria that you're required to evaluate these applications?

2 A Well, you said extensive knowledge of the marijuana
3 industry, as demonstrated, and prior experience running
4 marijuana establishments (indiscernible) to direct experience
5 with the operation. You know, it depends what they put on the
6 narrative.

7 Q Well, I'm going to get to that one. We'll get to
8 that. But you're saying that it reflects -- it may reflect
9 with the reg some indication of what was required as it applies
10 to experience; right?

11 A Right.

12 Q But it does not reflect anywhere in there any
13 evaluation of whether or not an applicant has demonstrated a
14 record of operating an establishment in compliance with the
15 laws and regulations of the state for an adequate period of
16 time to demonstrate success; right?

17 A Right.

18 Q And we're going to talk -- it wasn't included in the
19 instructions; right?

20 A Right.

21 Q And it wasn't certainly included in the evaluation
22 that you told the applicants that you were going consider?

23 A Right.

24 Q Because, in fact, the evaluators didn't consider that
25 provision at all; right?

1 A I guess.

2 Q You agree, though, that that provision of operating
3 on a marijuana establishment and compliance with the laws and
4 the regulation -- the laws and regulations of the state for an
5 adequate period of time, I think most directly addresses the
6 strong regulatory considerations we've identified in the Cole
7 memo; would that be a correct statement?

8 A Say it again.

9 Q Of all the criteria that you were required to include
10 in the application and evaluate, right, of all that criteria,
11 that provision that we're talking about, of demonstrating a
12 record of -- a record of compliance, that provision most
13 directly addresses the concerns that were identified in the
14 Cole memo; is that correct?

15 A I would agree.

16 Q Because other than that provision, there's no other
17 areas of the evaluation criteria that would consider a record
18 of compliance at all; right?

19 A Wait. Say that again.

20 Q Other than that provision that was left off of the
21 evaluation criteria, there's no other provisions in the
22 application that would evaluate a record of compliance in the
23 application at all; right?

24 A I don't believe so. I don't -- I don't -- I don't
25 think there's anything else on the application.

1 Q Because this is the only provision that would have
2 tied the evaluation of the applications to a licensee's history
3 of compliance; right?

4 A Yeah, possibly. I've got to -- I'd have to rereview
5 the application as a whole, but --

6 Q Let's turn to a different subsection. It's going to
7 be subsection (h) of that same criteria. NAC 453.272.

8 Now, the experience of an applicant's key personnel
9 in operating a recreational marijuana establishment was also
10 not scored in this application; is that correct?

11 A Yeah, I don't know.

12 Q You're not sure? Okay.

13 A Not sure.

14 Q I think that's -- that section, section (h), is its
15 own criteria; right, within that statute? It's no different
16 than diversity; right, which is subsection (a)? You know, this
17 isn't a part of a provision that just could have been ignored;
18 right? This is an entire provision, subsection (h), which
19 (indiscernible) the whole statute --

20 A Section (h) what?

21 Q -- was given the --

22 THE COURT: It's 453D.272.1(h). It's in the little
23 box on the screen.

24 BY MR. MILLER:

25 Q Pull out and just show him the whole regulation with

1 all the criteria. Here's all the areas you were supposed to
2 consider; right?

3 A Right, okay.

4 Q And you have (a) through (i).

5 A Okay.

6 Q Diversity was its own category on the application;
7 correct?

8 A Right.

9 Q It's clear to the applicants that that was going to
10 be scored. Educational achievements was its own category. It
11 was clear that that was going to be scored; right?

12 A Right.

13 Q But subsection (h), the experience of key personnel
14 that the applicant intends to employ in operating the type of
15 marijuana establishment for which the applicant seeks a license
16 wasn't scored at all; right?

17 A I don't remember.

18 Q Let's turn to the application itself, page 17.
19 Again, these are the instructions. Yet the description of the
20 proposed organizational structure of the proposed marijuana
21 establishment and information concerning each owner, officer,
22 and board member, including key personnel of the proposed
23 marijuana establishment, including information provided
24 pursuant to R09217 and page 18, 6.2.7, that whole section is
25 going to be worth 60 points; right?

1 A Where?

2 Q If you turn to Instruction 6.2.7. The experience of
3 key personnel that the applicant intends to employ.

4 A Okay.

5 Q All right. But the instructions don't provide any
6 guidance on where to include evidence of recreational marijuana
7 retail experience when a key employee is under that
8 application. Read page 11.5.2.1.0. Did you read that section
9 there?

10 A Yeah. Could you scroll up a little bit more? Is
11 there anything below it, after the narrative, a -- okay.

12 Q There's nothing in there that would give any
13 potential applicants any indication of where they were supposed
14 to list the experience of their key employees; is that correct?

15 A Correct.

16 Q And if it was to be included in an application,
17 despite the fact you didn't give them any indication as to
18 where to include it, would you agree that maybe the only area
19 that that might make sense is if the -- if it had been
20 evaluated in the experience section?

21 A In their experience or organizational structure,
22 maybe.

23 Q Okay. We've looked at the criteria and the
24 experience on that organizational structure. We can look back
25 at it, if you want. If you pull up Exhibit 7 again.

1 You have an excellent response, under the --
2 excellent response:

3 Extensive miles of the marijuana
4 industry is demonstrated in a prior
5 experience running marijuana establishments
6 as indicated.

7 There's nothing in there that deals with the
8 reviewing of the key -- of the experience of key employees, is
9 there?

10 A No.

11 Q And we looked already at the criteria that's above
12 that, of what they were supposed to be looking at, and that's
13 just a half resuscitation of subsection -- the other
14 subsection; right? It doesn't include anything about key
15 employees?

16 A No.

17 Q So you left out an entire subsection that you were
18 supposed to consider; is that correct?

19 A It appears.

20 Q Can we just show Exhibit 255. This is portions of
21 TGIG's compliance application. It's a proposed exhibit.

22 MR. SHEVORSKI: TGI0, fine. Who is TGI?

23 MR. MILLER: Yeah.

24 MR. SHEVORSKI: That's fine.

25 MR. MILLER: Admitted, Judge?

1 THE COURT: Yes. Sorry. I thought --
2 (Plaintiffs' Exhibit Number 255 admitted)

3 MR. MILLER: Losing your hearing.

4 THE COURT: Yeah.

5 MR. MILLER: All right. I'll speed up.

6 BY MR. MILLER:

7 Q This is the application of one of my clients, TGIG.
8 Now, that an entire 11 pages discussing their experience of
9 their key employees. (indiscernible) audience here, all of the
10 other employees that contributed to -- they determined to be
11 the success of their business that should have even been
12 considered as criteria and whether or not they should even
13 (indiscernible) license.

14 So even though they devoted substantial energy and
15 attention to try and address that session of the criteria that
16 was supposed to be evaluated, it wasn't taken into account at
17 all; right?

18 A You know, I -- I don't know because I don't know -- I
19 don't know if that was part of their training that they were
20 given to include that. I mean, I see that's not on the
21 evaluation sheet, but I don't know if it was part of their
22 training. If it wasn't, then --

23 Q You're looking at the evaluation sheet, so you've
24 already told me that if it wasn't in the instructions given to
25 the evaluators and it wasn't part of the criteria that they

1 were supposed to consider, they wouldn't have considered it;
2 right?

3 A Well, again, I don't know if it was part of their --
4 the additional training outside of the evaluation sheets.
5 Because they did receive training from staff for --

6 Q You just -- you're speculating that that might have
7 happened, even though the face of the application that we just
8 walked through -- we can walk through it again --

9 A I mean, we're speculating on a lot of things here.

10 THE COURT: Sir, I don't want you to speculate. I
11 want you to tell me why the Department did what it did and made
12 the decisions it made after Ballot Question 2 was passed and
13 your department was charged with implementing.

14 MR. MILLER: Well, let me say it this way.

15 THE WITNESS: Yes, Your Honor.

16 THE COURT: Wait. Thank you, sir. Now you may go,
17 Mr. Miller.

18 MR. MILLER: Were you asking a question, Judge. I
19 didn't catch it all.

20 THE COURT: I was making a statement. He said, "Yes,
21 Your Honor," and I just needed him to verify that while we were
22 here.

23 MR. MILLER: Got it.

24 BY MR. MILLER:

25 Q Let's pull up the application. And then we get to

1 the scoring criteria. You were involved in that; right? You
2 determined which points were going to be awarded?

3 A Yes.

4 Q And this is the --

5 MR. MILLER: We should pull up the -- I think it's
6 going to be page 18, 17. There we go, the page before.

7 BY MR. MILLER:

8 Q -- talking about an organizational structure; right?
9 You evaluate that criteria that was described there; right?

10 A I'm sorry?

11 Q You reviewed that criteria that was described there;
12 right?

13 A Under "organization"?

14 Q Yeah. Sixty points on the top, not up -- it's going
15 the wrong way. Yeah, organization.

16 A Right, uh-huh. Yes.

17 Q Description of the proposal -- and then you, in turn,
18 that's all (indiscernible). The description of the proposed
19 organizational structure of proposed marijuana establishment
20 and information concerning each owner, officer, and board
21 member of the proposed marijuana establishment, including the
22 information provided in response to the regulation. Right?

23 A Yeah.

24 Q And you determined that that criteria should be worth
25 60 points in total; right?

1 A Well, there are subcategories that make up that 60.

2 Q Right. You didn't disclose that to the applicants,
3 did you?

4 A No.

5 Q So it was secret to the applicants as though which
6 criteria are going to be included in that regulation and how
7 many points are going to be awarded; right?

8 A Yes.

9 Q Why did you keep that secret?

10 A Well, it's almost like -- my opinion, it's almost
11 like giving the answers to the test.

12 Q Is it?

13 A I mean --

14 Q How would it --

15 A Everyone's score -- sorry.

16 Q -- be like giving answers to the test, letting
17 everyone know that diversity, for example, was going to be
18 given 20 points, but the experience of key employees was going
19 to be worth zero because it wouldn't be considered. Is that
20 giving answers to the test?

21 A Wait. Say that again.

22 Q How would it be giving the answers to the test to
23 tell the applicants that diversity, within that 60 points, was
24 going to be awarded 20 points?

25 A The application can be tailored to, you know, those

1 specific areas, I guess.

2 Q Well, how did you come up with the weighting for it?

3 A A lot of it came from the 2014 application with some
4 adjustments.

5 Q Okay. So when you reviewed those adjustments, did
6 you look at it with an eye to what appropriate weight should be
7 given for a recreational license?

8 A Right, we -- it was discussed.

9 Q And when you discussed it, how did you come up with
10 the answers as to how many points should be awarded to each of
11 those criteria?

12 A Well, it was part of the discussion where we looked
13 at -- we had -- we added diversity so we had to pull -- we
14 wanted to keep the 250 points the same as it was in 2014. So
15 we pulled points from other areas to create the points for the
16 diversity and, you know, looked at state priorities, you know,
17 or what was different in 2014 versus 2018 and adjust the --
18 moved some points around.

19 Q Okay. So when you say "state priorities," what do
20 you mean? You looked at the state priorities in order to
21 determine the appropriate weight? What do you mean?

22 A Well, I say -- you know, I say what was important
23 maybe in 2014 was not necessarily so important in 2018.

24 Q Okay. So you made adjustments to the weighting of
25 the criteria based on your evaluation of what was more

1 important for a recreational license; is that fair?

2 A Yes.

3 Q Okay. When you made those adjustments, you gave some
4 criteria more consideration than others; right?

5 A Yes.

6 Q And when you made that determination, how did you
7 determine that diversity would be worth 20 of the 60 points?

8 A Well, looked at -- one consideration was the
9 legislature had amended 453A to include that criteria. So one
10 of the things we looked at was that the legislator felt that
11 diversity wasn't important enough to amend current law on the
12 medical study. And they couldn't amend 453D. We looked at --
13 you know, industry had -- one of the things over the period of
14 time was they wanted consistency between chapters and felt that
15 diversity isn't an important part of -- of running a business.

16 Q Okay. So you used that criteria, and you determined
17 that diversity would be worth a full third of that entire
18 section of the evaluation; correct?

19 A Yes.

20 Q Why would it have been giving the answers to the exam
21 to let the applicants know in advance that you were going to be
22 giving diversity 20 points?

23 A Well, I think, generally, overall, and not just on
24 that criteria, in all the other criteriums, I think what we
25 were trying to avoid was, you know, when I say give the answers

1 to the tests, that applications will be -- could be tailored,
2 and they all max out. And what do you do, you know, when they
3 all max out? It's just --

4 Q There's a lot going on there, so just let me back you
5 up. Applications could be tailored; right, to meet that
6 criteria? Is that what you said? That was a concern?

7 A Not just that criteria, but, you know, overall.

8 Q But isn't that the point of the application process
9 and the weight that you decided to associate with it? You want
10 applicants to focus attention on the areas that you determine
11 is the most important; right?

12 A I guess, yes.

13 THE COURT: This is a good time to break for lunch.
14 This is not a requested recess.

15 Sir, if we could be back at 1:15.

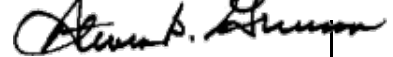
16 (Proceedings recessed at 11:43 a.m., until 1:19 p.m.)

17 -oOo-

18 ATTEST: I do hereby certify that I have truly and correctly
19 transcribed the audio/video proceedings in the above-entitled
20 case.

21 
22

23 Dana L. Williams
24 Transcriber
25



TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

SERENITY WELLNESS CENTER LLC, .
et al. .

Plaintiffs .

CASE NO. A-19-786962-B

vs. .

STATE OF NEVADA DEPARTMENT OF .
TAXATION .

DEPT. NO. XI

Defendant .

**Transcript of
Proceedings**

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BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

**EVIDENTIARY HEARING - DAY 9
VOLUME II**

WEDNESDAY, JUNE 19, 2019

COURT RECORDER:

TRANSCRIPTION BY:

JILL HAWKINS
District Court

FLORENCE HOYT
Las Vegas, Nevada 89146

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

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JOSEPH GUTIERREZ, ESQ.

1 LAS VEGAS, NEVADA, WEDNESDAY, JUNE 19, 2019, 1:19 P.M.

2 (Court was called to order)

3 THE COURT: Counsel, the witness is still under
4 oath. Are you ready to continue?

5 Mr. Miller, thank you for your accommodation in
6 letting me ask my questions before lunch.

7 MR. MILLER: Yeah. No. Thank you.

8 (Pause in the proceedings)

9 DIRECT EXAMINATION (Continued)

10 BY MR. MILLER:

11 Q Redirect your attention to NAC 453.272(h) that we
12 were talking about.

13 THE COURT: We're still on .272?

14 MR. MILLER: Yes.

15 BY MR. MILLER:

16 Q [Unintelligible] to evaluate "The experience of key
17 personnel that the applicant intends to employ in operating
18 the type of marijuana establishment for which the applicant
19 seeks the license"; right? So the regulation essentially has
20 two key components, the experience of the key personnel and if
21 they have experience in the type of establishment that they're
22 seeking a license. So this criteria in the recreational
23 license context would have evaluated the experience of key
24 personnel in retail marijuana; is that fair?

25 A Yes.

1 Q Okay. And that would have been an important
2 consideration to the evaluator on the application; correct?

3 A Yes.

4 Q Okay. Because experience in other sectors of the
5 marijuana industry may or may not be as applicable; is that
6 correct?

7 A As equivocal you said?

8 Q Yeah.

9 A Yes.

10 Q All right. A team of key employees that had vast
11 experience in cultivation might not be able to make the
12 transition as well to retail as well as a team that had key
13 experience in retail moving to get more retail experience; is
14 that right?

15 A Yeah, I don't -- right. Okay.

16 Q And you wouldn't expect people that had vast
17 experience growing coffee beans to automatically be able to
18 make the leap in order to be able to sell coffee beans at
19 Starbucks; right? Is that a fair analogy?

20 A Sure.

21 Q Okay. And so there should be a distinction between
22 those who had experience perhaps in cultivation and were able
23 to apply and -- you know, those key members of their team, and
24 those who had experience in the retail sector; is that right?

25 A Right. Unless their key personnel had experience in

1 a dispensary, you know, running a dispensary.

2 Q Right. But this is the criteria that would evaluate
3 that; right?

4 A Yes.

5 Q All right. So if their key personnel did have
6 experience in a dispensary, that presumably would have been
7 reflected on the applications; right?

8 A Right.

9 Q But if their key personnel only had experience in
10 cultivation, then that should have been reflected and scored
11 appropriately on the application?

12 A I would think so, yeah.

13 Q And yet when you handed out the licenses -- actually
14 public release of many documents your information that you
15 released indicates that the awardees that didn't previously
16 have a dispensary license accounted for 53 percent of the new
17 conditional licenses?

18 A Right. Something like that, yeah, 53, 54 percent.

19 Q So over half of the individuals -- licensees that
20 were awarded additional licenses in this process didn't have
21 any experience at all among their key employees in terms of
22 dispensaries; is that right?

23 A I don't know that.

24 Q Okay. Well, but you just suggested it's on the
25 Website; right? Awardees that didn't previously have a

1 dispensary, 53 percent?

2 A Right. Can you repeat that question.

3 Q Awardees that previously didn't have a dispensary,
4 53 percent, what does that indicate?

5 A Well, exactly that, that they didn't have a
6 dispensary license.

7 Q Okay. But only licensees who previously had some
8 form of license could apply; right?

9 A Yes.

10 Q Okay. So does that mean that this indicates that
11 53 percent did not have a dispensary prior to applying?

12 A Of the total applicants?

13 Q Yeah.

14 A Could have been more that -- more applicants that
15 just had a cultivation license. Those -- 53 percent I believe
16 was the number of licenses that were issued to an applicant
17 that did not own a dispensary or retail store at the time.

18 Q Right. So it would have been licensees that were
19 awarded a license that wouldn't have met the criteria
20 identified here in this subsection, right, the experience of
21 key personnel in a type of marijuana facility we're evaluating
22 here, which is a retail marijuana store; right?

23 A Well, I don't know that. I don't know who they had
24 on staff that may have met that criteria.

25 Q What does it mean when it says, "Awardees that

1 didn't previously have a dispensary, 53 percent"?

2 A Right. So that the applicant did not -- the
3 applicant did not have a retail store license.

4 Q Okay. Have you reviewed the scoring methodology the
5 evaluators use with respect to experience with a marijuana
6 establishment in Nevada?

7 A The --

8 Q Scoring methodology, how the evaluators actually
9 conducted their scores. Have you reviewed that?

10 A I believe I have sometime, some point.

11 Q Okay. I'll show you NAC 345D.272(g). Review this
12 provision. So "Whether the owners, officers, or board members
13 of the proposed marijuana establishment have direct experience
14 in the operation of a medical marijuana establishment, a
15 marijuana establishment in this state."

16 Now, if they had read the application instructions,
17 the applicants might have understood that the 750-word essay
18 and resumes would determine how they'd be scored on that
19 criteria; correct?

20 A Yeah. I'm not sure if it was just based on the
21 narrative.

22 Q I'm sorry?

23 A I'm not sure if it was just based on the narrative.

24 Q Okay. Well, we can go back to the instructions.

25 MR. MILLER: Can you pull up the application.

1 That's the evaluation criteria. We need the other section,
2 which describes how they're going to evaluate, which is
3 Section 5.1.0. So the 5.1.10 -- little lower. You had it
4 before it crashed. There. It actually was unattached --
5 BY MR. MILLER:

6 Q 5.2, sorry, indicates they're supposed to show an
7 organizational chart, right, and then a narrative description
8 -- 5.2.10.5, "A narrative description not to exceed 750 words
9 demonstrating the following." And then the next page.
10 5.2.10.5.2, "Any previous experience operating other
11 businesses or nonprofit organizations, including marijuana
12 industry experience." Right?

13 A Right.

14 Q That appears to be the way -- the instructions where
15 you indicate to the applicants that that's how you're going to
16 evaluate their experience; correct?

17 A Yes.

18 MR. MILLER: Can we show Exhibit 256, which hasn't
19 been admitted, so it's our client's handwritten evaluation
20 score sheet.

21 THE CLERK: It's proposed.

22 THE COURT: 256.

23 MR. MILLER: Yes.

24 THE COURT: Any objection?

25 MR. SHEVORSKI: No objection.

1 THE COURT: Be admitted.

2 (Plaintiffs' Exhibit 256 admitted)

3 MR. MILLER: Okay. And go to 40219. Yeah. Start
4 there.

5 BY MR. MILLER:

6 Q Sir, have you reviewed the handwritten scoring
7 sheets that the evaluators used?

8 A No. Well, blank ones, yes.

9 Q Okay.

10 A Well, some of these. I had never seen this one
11 that's up on the board.

12 Q Okay. So you haven't reviewed these and seen that
13 this same format might have been used to evaluate all of the
14 applications?

15 A No, I didn't review those.

16 Q Okay. So let's take a closer look here. Can you
17 see this screen? Can you see that appear to be doing here is
18 listing out at the top there, they numbered them, officers,
19 owners, and board members that would have been identified on
20 the application?

21 A Okay.

22 Q If we go to the next page, you'll see that that
23 continues. So -- and this application, of the identified
24 criteria they've listed out 21 total individuals that are
25 associated with the same individuals that are listed on

1 Attachment A. And then on the left-hand side of this document
2 you see there where it says, "MJ --" I can't read it, "MJ
3 Experience," something to that effect? Isolate "No
4 experience, MJ experience -- MJ in Nevada?

5 A Okay. Uh-huh.

6 Q Yeah. Let's see what follows in each of those
7 individual categories. Once they listed out their owners,
8 officer, and board members the evaluator will simply put a
9 checkmark for that category. You see that?

10 A Yes.

11 Q All right. You see on the left-hand side right next
12 to it, see that they list that they had seven officers,
13 owners, or board members with marijuana experience in Nevada
14 and 14 without?

15 A Okay.

16 Q So this applicant, TGIG, receives a 3. We've heard
17 previous testimony about that.

18 A Received a what?

19 Q A 3, a score of 3 --

20 A Okay.

21 Q -- on this 10-point category for experience with
22 marijuana in Nevada. And you'll see one of the score sheets
23 here that we'll go through, this is the mathematical equation.
24 It's 21 divided by 7, which gives a .33, so they get 3. Do
25 you see that?

1 A I don't see where you worked that out.

2 Q Okay. Well, you see that on the left-hand side
3 where they list the 14 and 7; right?

4 A 14, uh-huh.

5 Q Yeah.

6 MR. MILLER: We'll pull up the individual weighting
7 that they were given on the evaluations criteria. But what I
8 want to show is the other evaluators also use this same
9 grading. Can you show 40230.

10 BY MR. MILLER:

11 Q So a different evaluator using the same grid, where
12 they simply reduced the entire section to a series of
13 checkmarks; right? And 40245. See that, sir?

14 A Right. I see where they checked off.

15 MR. MILLER: Yeah. It's 40218, please. Flip back
16 to the pages that actually have the evaluation where the
17 evaluators record their scores. This is a diversity factor.
18 But can you show the one that pertains to experience with
19 marijuana.

20 BY MR. MILLER:

21 Q All right. So here you can see them actually
22 calculating it; right?

23 A Right.

24 Q All right. So it looks like in this instance even
25 21 owners, officers, or board members -- this is a 5-point

1 factor, so it's a different category. But 14 is yes, 3 is
2 some, so they're going to get half the points for some, and 4
3 no. Right? And then they just perform the math.

4 MR. MILLER: Is this the experience with marijuana
5 section, or a different one? Scroll down a little bit. Okay.
6 Go to the next one. There should be more evaluator sheets at
7 the bottom. Okay. We can go to Exhibit 254.

8 THE CLERK: Proposed.

9 MR. MILLER: Proposed Exhibit 254.

10 THE COURT: Any objection to 254?

11 MR. KOCH: No objection.

12 THE COURT: Given the additional redactions made,
13 any objection?

14 MR. KOCH: We made redactions on the document that
15 you proposed. I think the only --

16 MR. MILLER: Yes. I think we need to actually
17 redact --

18 THE COURT: So have those redactions been placed
19 into the exhibit the clerk has?

20 MR. KOCH: From my understanding. I wrote on the
21 document that he was going to submit, that's the one that he
22 submitted, yes, it is.

23 MR. MILLER: We'll make sure that that happens, Your
24 Honor.

25 THE COURT: No. Could we check.

1 MR. MILLER: Okay.

2 THE COURT: Sorry, sir, while they do this little --

3 MR. KOCH: No, this is not --

4 THE COURT: Of course it isn't. So --

5 (Pause in the proceedings)

6 THE COURT: Okay. So let's not display it to me,
7 because it's not redacted. The witness can of course look at
8 it with you --

9 MR. MILLER: Sure.

10 THE COURT: -- as long as you don't admit it.

11 MR. MILLER: Yeah. Could you pull up that earlier
12 exhibit.

13 THE COURT: No. Don't show it to me.

14 MR. MILLER: Well, he's got it redacted, Your Honor.

15 THE COURT: Oh. He does?

16 MR. MILLER: Yes.

17 THE COURT: How are we going to get a redacted
18 version to admit.

19 IT TECHNICIAN: We can print it, Your Honor.

20 THE COURT: Okay. So they're going to print the
21 redacted version. The redacted version pursuant to
22 stipulation will be admitted. Since the --

23 MR. KOCH: Is the version that you have the one that
24 I did handwritten marker on, or did you redact it separately.

25 IT TECHNICIAN: I redacted it separately.

1 MR. KOCH: Okay. Can I look at it first.

2 THE COURT: Yes.

3 (Pause in the proceedings)

4 MR. KOCH: We've reviewed it and redacted the items
5 that needed to be redacted.

6 THE COURT: So the redactions on the version that's
7 going to be displayed seem to comport with your understanding?

8 MR. KOCH: Correct.

9 THE COURT: So the version that you're showing will
10 be printed and provided to Dulce for admission?

11 MR. KOCH: Correct.

12 THE COURT: Okay.

13 MR. MILLER: Thank you, Judge.

14 THE COURT: You may show it now.

15 (Plaintiffs' Exhibit 254 admitted)

16 MR. MILLER: All right.

17 BY MR. MILLER:

18 Q All right. Sir, if you can look at the handwritten
19 scoring sheet there. Do you see that for this applicant they
20 determined that 12 or 13 of them have marijuana experience in
21 Nevada, 5 have marijuana experience somewhere else, and that 4
22 have experience -- no experience at all, right, out of 22?

23 A Right.

24 Q So 10 divided by 22 in order to reduce that to a
25 10-point scale and multiplying .45, which is 10 divided by 22

1 times 13, using 5.8 getting half of a point, people with some
2 experience but not in Nevada, and that's in that
3 multiplication, correct, looks like?

4 A Okay.

5 Q That gives them a score of 7. Do you need more time
6 to review it, sir?

7 A Okay.

8 Q Does that appear to be an accurate assessment of how
9 these applications were evaluated for those criteria?

10 A Right. I suppose, yeah.

11 Q You suppose. Do you see any other indication on
12 that sheet as to how it might have been evaluated?

13 A No.

14 Q Okay. So we've heard previous testimony that Nevada
15 Organic Remedies scored a 7 in marijuana experience in Nevada,
16 whereas TGIG scored a 3. But if you had reduced all of those
17 -- you'd reduced that entire criteria that we read and the
18 expectation of the applicants that they were going to define
19 their total experience in an essay to a series of checkmarks,
20 sir, that wouldn't appropriately evaluate the experience that
21 an applicant had in that category; is that correct?

22 A I'm not sure what those checkmarks represented to
23 the evaluators. I mean --

24 MR. MILLER: All right. So can you pull back up the
25 checklist there that the evaluators created.

1 BY MR. MILLER:

2 Q So can you see that they're just counting them up?
3 Review those three sheets, if you need to. I think you'll
4 find that if you review those three sheets, individual that
5 has a checkmark gets added to the tally as to whether or not
6 they have experience in Nevada, and if they don't, it will
7 sometimes indicate a no.

8 A I see. Okay.

9 Q So they reduced it to a mathematical formula it
10 appears; right?

11 A Yes.

12 MR. MILLER: All right. And pull back up 256.
13 Yeah, 256, and go to 4230.

14 BY MR. MILLER:

15 Q You'll see on a section in diversity here is again
16 the mathematical formula. They've gone through and identified
17 all of the individuals that are owners, officers, or board
18 members, right, added up the checkmarks, and they provided a
19 numerator and a denominator, right, on the left-hand column,
20 8, yes, 13 no?

21 A Yes.

22 Q So we've gone through it for the owners, officers,
23 and board members and identified which of those meet the
24 criteria that you established on the diversity, added them up
25 and applied a mathematical formula to arrive at the score;

1 right? That's what it appears that they're doing?

2 A Yes. Yes.

3 Q All right. And we can go to 40218. So 8 out of 21
4 had some indication of diversity here. It's 38 percent. So
5 the circle, that puts me in the category I'm awarded 8 points?

6 A Yes.

7 Q Okay. 40229. Different evaluator conducting the
8 same analysis, reducing that to a mathematical formula. 8 out
9 of 21 gives me 38 percent, 80 points; right?

10 A Yes.

11 Q Okay. Educational experience. Another criteria
12 that they were tasked with evaluating.

13 MR. MILLER: Go to 40217. Well, first, let's go
14 back to that 40230.

15 BY MR. MILLER:

16 Q See in the left-hand column they've identified that
17 there are how many with -- 3 with some, 4 with no, 14 with
18 yes. Do you see that?

19 A Yes.

20 Q And then they've gone through again with the owners,
21 officer, and directors and provided checkmarks whether or not
22 they met that criteria; right?

23 A Yes.

24 MR. MILLER: Okay. Can we go to 40217.

25 //

1 BY MR. MILLER:

2 Q The same mathematical equation that we've seen in
3 the previous instances; right?

4 A Right.

5 Q So it looks like they reduced the educational
6 requirements to a mathematical formula, as well; right?

7 A Yes.

8 Q Okay. And previous business experience. 40230,
9 again. Again they're putting checkmarks on the left-hand
10 column there that give us, if we zoom in there, 7 no, 14 yes.

11 Other contributions and financial. Let's see.
12 They've got a mathematical calculation there, should be a
13 little bit lower down, I believe. There at the very bottom.
14 It's right below that, yeah, where it says "nonprofit," 13 out
15 of 21. Do you see that?

16 A Yes.

17 Q Okay. All right. So it appears that the evaluators
18 when scoring these applications applied a binary formula,
19 right, that either you have experience or you don't, and, if
20 so, you're given a checkmark, and that adds to your score. If
21 not, it doesn't add to your score. Is that a fair assessment?

22 A Yes.

23 Q All right. So if an officer who was involved in all
24 day-to-day operations and had extensive experience detailed in
25 a 750-word essay, the best they could do under this scoring

1 criteria is just get a checkmark; right?

2 A On this sheet I would say, you know, they'd get
3 their points.

4 Q So they get 1 point [inaudible] on a percentage
5 basis that everyone else that's listed is an owner, officer,
6 and director; right?

7 A I would believe so.

8 Q Okay. And anybody that doesn't have that experience
9 isn't going to get a point that's going get calculated towards
10 that percent; is that correct?

11 A Yeah, I would believe so.

12 Q All right. So if a small minority investor with no
13 involvement in the operation, really isn't expected to have
14 any value added to the licensee's overall operation of a
15 marijuana establishment in this state, had no prior experience
16 they wouldn't get a check; right?

17 A If they had no prior --

18 Q If they had no experience, they wouldn't get a
19 check; right? We went through this.

20 A Right. Right.

21 Q Let me explain it another way. But that would
22 effectively cancel out any owner, officer, or director that
23 had vast experience, right, because this is just a binary
24 calculation? You either have it or you don't; right?

25 A Yeah, it seems that way.

1 Q Yeah. So there's not more weight given to one
2 member that may have more experience and more involvement in
3 the operation relative to anyone else?

4 A Right. [Unintelligible]

5 Q And if you'd known that walking into this
6 application, obviously who you listed as owners, officers, and
7 board members would be pretty important. Is that a fair
8 assessment?

9 A Sure.

10 Q All right. Let's turn to training. How much
11 training are regulators in your Division who might evaluate
12 regulatory compliance of licensees given?

13 A Can you say it, again.

14 Q Yeah. How much training do regulators within your
15 Division receive?

16 A For the evaluation of applications?

17 Q No. For overall training when you hire somebody off
18 the street --

19 THE COURT: For actually regulating the industry?

20 THE WITNESS: Oh. For actually regulating the --

21 BY MR. MILLER:

22 Q Yeah.

23 A You know, I'm not sure. Several weeks or months.

24 Q There is a formal training process; right?

25 A Right.

1 Q And what does it consist of?

2 A For the marijuana inspectors they have -- Kara
3 Cronkhite does the training, does some I guess face-to-face,
4 one-on-one training. And then they go out in the field with
5 other inspectors. They go along with each inspector, and they
6 have their training experience from -- and some of them are
7 registered environmental health specialists or they have
8 previous experience in --

9 Q Okay. And of the six evaluators that you hired
10 under Manpower none of those had any experience -- prior
11 experience in marijuana regulation; correct?

12 A Not that I know of.

13 Q Okay. And you're aware that they were given just
14 two weeks of training; is that right?

15 A That's what I understand, yes.

16 Q Okay. And they were essentially given a crash
17 course; correct?

18 A Yes.

19 Q Showing Exhibit 206, page 172. This is taken from
20 the PowerPoint that was provided by the State. It was used
21 during the training course that was given to the evaluators.
22 See where it says, "Crash course covered two weeks of
23 instruction in one hour. This instruction was built, moved
24 through quickly, heavily geared toward application
25 familiarization. Important process beyond the application

1 evaluation." So within two weeks these -- it's fair to say
2 that these evaluators were expected to cover an awful lot of
3 material; is that right?

4 A Yes, I would assume so.

5 Q So you expected them to have enough of depth in the
6 marijuana industry to be able to properly evaluate these
7 applications; right?

8 A Yes.

9 Q And they would have also been expected to understand
10 a substantial body of law that would have applied to those
11 applications; correct?

12 A Yes.

13 Q Maybe not?

14 A Well, I would expect them to have some familiarity
15 regarding the criteria or experience of the criteria that
16 they're tasked to grade or to evaluate.

17 Q Okay. But the criteria was established by the
18 regulations and the law; correct?

19 A Yes.

20 Q So they were expected to have a familiarity and
21 understanding of that law; right?

22 A Yes.

23 Q And I understand you weren't there for this
24 training; is that correct?

25 A Correct.

1 Q And so you weren't there to make sure that the
2 evaluators understood how to properly apply that criteria;
3 correct?

4 A Correct.

5 Q And you weren't there to stress the importance of
6 the applications to Nevada's marijuana industry, either;
7 right?

8 A Correct.

9 Q Following that crash course to your knowledge did
10 any of the evaluators receive any additional instruction, or
11 was that it?

12 A I don't know.

13 Q Okay. But you are aware that the evaluators had
14 very limited interaction with Department staff following the
15 training period; correct?

16 A Yes.

17 Q Read the transcript of May 28th, 2019, page 11, line
18 18. "As I understood, you were the primary contact for these
19 Manpower people. Is that right?"

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

22 And that did not include yourself; correct?

23 A Correct.

24 Q But, nevertheless, there were only four individuals
25 within your agency that had direct contact with those Manpower

1 employees at any time; is that right?

2 A I'm not sure how many.

3 Q Okay. But you don't have any reason to dispute the
4 testimony if the testimony said that there were four?

5 A No.

6 MR. MILLER: All right. And Exhibit 251, page
7 number DOT41859.

8 THE COURT: Any objection?

9 MR. MILLER: Oh. Sorry.

10 MR. SHEVORSKI: Which one is it?

11 THE COURT: 251.

12 MR. MILLER: Yeah, it's 251.

13 MR. SHEVORSKI: No objection.

14 THE COURT: Be admitted.

15 (Plaintiffs' Exhibit 251 admitted)

16 BY MR. MILLER:

17 Q This is an email that was provided to us from the
18 State from Ky Plaskon to yourself, Stephanie Klapstein, and
19 Steve Gilbert. That's going to be I believe on the second
20 page. It says, during -- that's 41859. Yeah. "During the
21 application process evaluators acted completely independently.
22 They'd check in from the EIO on program officer twice a day."
23 See that?

24 A Yes, I see it.

25 Q To your understanding is that accurate?

1 A From what I understand from my staff, yeah.

2 Q Okay. To your knowledge after these evaluators had
3 scored the applications did your Division conduct any exit
4 interview with them?

5 A I don't know.

6 Q You're not aware of whether or not the Division made
7 any attempt at all in order to review how they scored these
8 applications?

9 A I don't know.

10 Q And we've heard previous testimony that Manpower
11 conducted their own quality control program in making sure
12 that these scores were accurate. Is that correct, to your
13 knowledge?

14 A That Manpower did their own quality control?

15 Q Uh-huh.

16 A The evaluators, or Manpower the company?

17 Q The evaluators.

18 A The evaluators? Yeah, I don't know if they did or
19 not.

20 Q You don't have any reason to dispute the prior
21 testimony that they did their own quality control; right?

22 A No.

23 Q And you indicated you didn't review the evaluation
24 sheets that the evaluators used to make notes on. But are you
25 aware of anyone else in your Department going through after

1 the evaluation process was complete and reviewing those
2 sheets?

3 A Whether my staff made notes on those sheets?

4 Q You indicated to us that you had not reviewed those
5 handwritten scoring sheets that included notes --

6 A Right.

7 Q -- that would give some indication as to how they
8 scored these applications; right?

9 A Right.

10 Q Are you aware of any efforts within your Department
11 to have reviewed those sheets after the scoring was completed?

12 A Yeah, I don't know.

13 Q Is that a no, you're not aware of any?

14 A No, I'm not aware of any.

15 Q Okay. So you're not aware of any efforts that your
16 Department might have taken after that scoring was complete to
17 make sure that the evaluators would have properly applied the
18 correct criteria; correct?

19 A What I know is that -- that process was basically
20 delegated to my staff, and what that entailed I'm not sure of
21 that. I -- you know, I was told that the process was being
22 audited, and what that audit entails I don't even know what
23 they looked at or whether they made notes or what they
24 reviewed.

25 Q Okay. So I think you're telling us that you were

1 tasked, right, as head of this Division with evaluating the
2 applications for licenses for selling marijuana in the state
3 of Nevada; correct?

4 A Right.

5 Q And then you then delegated that task to your staff;
6 is that right?

7 A Yes. I relied on their experience.

8 Q Okay. And you can't tell us today whether or not
9 there was any effort by your Division to review the
10 applications as to how they were scored following the scoring
11 process; correct?

12 A Right. I had no interaction with that process.

13 Q Okay. But you're not aware of any efforts within
14 your department to go back and check and make sure that these
15 temporary employees scored these applications correctly, are
16 you?

17 A I don't know that. Like I said, they -- my staff
18 indicated that they audited sheets in the process. But I
19 don't know what that entails.

20 Q So at least as you sit here today you can't tell us
21 whether or not these evaluators interpreted the criteria
22 appropriately; correct?

23 A No.

24 Q And you can't tell us whether or not those
25 evaluators properly applied the law in the applications,

1 either; correct?

2 A Correct.

3 Q Okay. So as part of what you asked these temporary
4 employees to review, they were responsible for the evaluation
5 of plans relating to the care, quality, and safekeeping of
6 marijuana; is that correct?

7 A Yes.

8 Q Show you Exhibit 8, the evaluation guideline that
9 was given to the evaluators. Page 6. See where it says, "An
10 excellent plan will show the following: the plan fully
11 demonstrates the building security features and procedures,
12 demonstrate the applicant's ability to prevent the theft or
13 diversion of marijuana, and how the [unintelligible] assist
14 law enforcement and the Department, should include a detailed
15 budget for the proposed establishment, and fully show
16 preconstruction -- pre-opening construction and the first year
17 operating experiences."

18 You previously testified that none of the evaluators
19 had any experience with the regulation of marijuana; correct?

20 A Yeah, I believe so.

21 Q And yet you expected them to accurately apply the
22 criteria and determine whether or not somebody would have
23 provided a model answer versus a poor answer; correct?

24 A Well, I believe in conjunction with their training
25 and experience of whatever field that they were evaluating and

1 their own field and the training provided by the staff should
2 give them enough knowledge to evaluate building security
3 features and these items, detailed budgets.

4 Q Tell me that temporary employees that had no
5 background in marijuana after two weeks of training would have
6 been able to properly assess whether or not an applicant's
7 plan demonstrates the building security features and
8 procedures that are necessary in order to prevent the theft or
9 diversion of marijuana and how the plan would assist allow
10 enforcement and the Department?

11 A Yes.

12 Q We went through this on the Cole memo, right? You
13 remember the priority that said that the federal government
14 will come busting down doors if there's evidence of lax
15 regulation; right?

16 A Yes.

17 Q And one of those criteria was if legalized marijuana
18 is being diverted to other areas that could include states
19 that did not legalize marijuana; right?

20 A Yes.

21 Q And this is the plan where applicants would list how
22 they're going to prevent that; right?

23 A Yes.

24 Q You're telling us that temporary employees, after
25 only two weeks of training, can appropriately apply the

1 criteria and evaluate whose plan may be better than another to
2 make sure that we don't divert marijuana into the state of
3 Utah?

4 A Well, I think that you don't necessarily have to
5 have the experience in marijuana. It could be any product,
6 for that matter, that you have experience in building security
7 and theft, preventing theft or those type items and final
8 budgets and things. It doesn't necessarily have to be
9 experience in marijuana, I guess. Very few people have
10 experience in marijuana anyway. I mean, if you look at it,
11 there's not a lot of experience in this industry.

12 Q Okay. Who would be better prepared to assess
13 whether their plans for marijuana safekeeping, including
14 inventory control, meet the Department's regulatory
15 requirements, Manpower employees with two weeks of training,
16 or your staff?

17 A My staff.

18 Q But you didn't use your staff; right?

19 A No.

20 Q Who would be better prepared to assess whether their
21 plans accurately address security issues within Nevada's
22 industry, Manpower employees with two weeks of training, or
23 your staff?

24 A My staff.

25 Q You also know that -- are you aware that the

1 evaluators appeared to have spent very little time relative to
2 what your Division had expected in reviewing these
3 applications?

4 A No.

5 Q No? Okay. Read -- this is the exhibit with time
6 calculation, 24648. Sorry. It's Exhibit --

7 MR. MILLER: Do have that exhibit number, Shane? If
8 not, I'll skip it.

9 BY MR. MILLER:

10 Q Sir, are you aware that in the PowerPoints, we've
11 heard previous testimony on this, that the Department
12 anticipated that these applications would take 33 hours to
13 review?

14 A No.

15 MR. MILLER: Sorry. It's Exhibit 207. And it's
16 going to be page 24648. We'll skip it.

17 All right. How about Exhibit 257.

18 THE CLERK: Proposed.

19 THE COURT: Any objection?

20 MR. MILLER: This is criteria for one of my clients.

21 MR. SHEVORSKI: No objections.

22 THE COURT: Be admitted.

23 (Plaintiffs' Exhibit 257 admitted)

24 BY MR. MILLER:

25 Q Let's get to the 24648. Are you familiar with this

1 sheet, sir?

2 A I'm sorry.

3 Q Are you familiar with this template --

4 A No.

5 Q -- or this document?

6 A No.

7 Q It's the evaluators' tally of their score sheets.

8 At the bottom there you'll see -- at the very bottom you'll

9 see where the evaluators listed the time that they spent on

10 that application. So it appears that one of the evaluators

11 spent an hour and 15 minutes reviewing the scoring plans;

12 right?

13 A Yes.

14 Q Okay. And two evaluators spent one hour; is that

15 correct?

16 A In care and quality, yes.

17 Q Yeah. Okay. And this applicant, if we go up to the

18 top, had five applications that were evaluated during that

19 time period. Do you see that?

20 A Yes.

21 Q So that's an average of 12 minutes to review and

22 evaluate and score that entire plan; correct?

23 A Well, I don't know, because I believe that from my

24 understanding many applicants submitted the same application,

25 just for different jurisdictions.

1 Q Okay.

2 A So they may have just reviewed one because the other
3 four were identical.

4 Q And may have. We'll get to that part of the
5 testimony, and I'll redirect you there. This particular
6 applicant testified that they had unique plans for every
7 jurisdiction and he was unaware of that rule. If that was the
8 case, you would agree that it appears that these evaluators
9 only spent 12 minutes per application; correct?

10 A Yes.

11 Q Okay. And you're aware that some applicants' care,
12 quality, and control or response sections were sometimes over
13 600 pages long for only one application?

14 A I understand they vary. I don't know be how much or
15 how long.

16 Q Okay. But hundreds of pages, could be?

17 A Could be, yes.

18 Q Over a thousand sometimes?

19 A I don't know.

20 Q There were requirements in NRS 453D that placed
21 limitations on where a proposed marijuana establishment can
22 operate; correct?

23 A Yes.

24 Q Read NRS 453D.230(b). Require an application fee,
25 and then we'll skip down to the physical address.

1 THE COURT: So do you want the Administrative Code,
2 or the statute?

3 MR. MILLER: I'm sorry. NAC. Thank you, Judge.

4 THE COURT: It's okay.

5 MR. MILLER: NAC 453D.230. Nope.

6 NRS 453D.210(5)(b). I think I've got a typo.

7 THE COURT: The physical address?

8 MR. MILLER: Yes.

9 THE COURT: Okay.

10 MR. MILLER: Thank you.

11 BY MR. MILLER:

12 Q (5)(b) physical address. So "The Department shall
13 approve a license if prospective marijuana establishment has
14 submitted an application in compliance with the regulations,
15 the physical address where the proposed marijuana
16 establishment will operate is owned by that applicant or the
17 applicant has written permission of the property to operate
18 the proposed marijuana establishment on that property."
19 Right? That was put in the initiative; correct?

20 A Yes.

21 Q All right. And then in the regulation you further
22 interpreted that under NAC 453D.268(2)(e).

23 If we could show that.

24 If you could go to subsection (2) at the top, it
25 says, "The application must include -- must, without