

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 10:59 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

v.

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

and

THE STATE OF NEVADA DEPARTMENT OF TAXATION,
Respondent,

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

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David R. Koch (NV Bar #8830)
Brody R. Wight (NV Bar #13615)
KOCH & SCOW LLC
11500 S. Eastern Ave., Suite 210
Henderson, NV 89052
Telephone: (702) 318-5040
Email: dkoch@kochscow.com, bwight@kochscow.com
Attorneys for Appellant Nevada Organic Remedies, LLC

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CERTIFICATE OF SERVICE

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

Adam Fulton and Maximilien D. Fetaz
Brownsein Hyatt Farber Shreck, LLP

Counsel for Respondents,

ETWManagement Group LLC; Global Harmony LLC; Green Leaf Farms Holdings LL; 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; TH Nevada LLC; Zion Gardens LLC; and MMOF Vegas Retail Inc.

Ketan D. Bhirud, Aaron D. Ford, Theresa M. Haar, David J. Pope,
and Steven G. Shevorski

Office of the Attorney General

Counsel for Respondent,

The State of Nevada Department of Taxation

David R. Koch, Steven B. Scow, Daniel G. Scow, and Brody R. Wight

Koch & Scow, LLC

Counsel for Appellant,

Nevada Organic Remedies, LLC

Margaret A. McLetchie, Alina M. Shell

McLetchie Law

Counsel for Appellant,

Counsel for GreenMart of Nevada NLV LLC

/s/ David R. Koch

Koch & Scow

1 application process in September 2018?

2 A I didn't envision it. That was my concern from day
3 one and I have continued to express that.

4 Q Was there an anticipation or expectation that
5 perhaps minority ownership groups would be given substantially
6 more weight or credit than the 20 points that we've talked
7 about here?

8 A No, because as you just said, there were technically
9 no other minorities. My concern was trying to get minorities
10 into the industry.

11 Q Okay. Were there -- did you attend any discussions
12 or any potential legislation meetings, anything like that
13 where there would be a requirement for existing owners to
14 perhaps sell part of their stake to minorities in order to get
15 a new application or get a new --

16 A No. I wasn't invited to those meetings, either.

17 Q Okay. Do you know of any of them that took place?
18 I'm just --

19 A No.

20 Q -- asking for the record.

21 A I do know they had many meetings. I do know that.

22 Q Okay. A lot of meetings?

23 A Yeah, they did.

24 Q You went to some of those?

25 A No.

1 Q Oh, you didn't go to any of those?

2 A No, they didn't invite me to any meetings ever.

3 Q Who was holding these meetings?

4 A The Legislature. Tick Segerblom really was the
5 driver of the process.

6 Q All right. And did you -- you didn't expect -- the
7 fact that your company was the sole -- was it the sole 100
8 percent minority-owned business that had a medical
9 certificate?

10 A To my knowledge the only one.

11 Q All right. And by filing a recreational application
12 with that you need qualifications. Did you expect to I guess
13 automatically receive a recreational license, or how would
14 that be factored in your estimation?

15 A No. We have to be better.

16 Q So you've got to still be scored on the other
17 characteristics; right?

18 A That's correct.

19 Q You didn't expect that the other points and
20 qualifications would be scored differently because of minority
21 ownership; right?

22 A Right.

23 Q Okay. What about female ownership? Was that
24 something you thought would be scored as well as part of
25 diversity?

1 A Well, as a part of the system females are considered
2 a part of diversity. Now, I don't know how the State looked
3 at that, but in my -- what I do, typically the white guy has
4 enough money so he puts his wife in there as a minority and
5 then she benefits, so they still benefit.

6 Q So there's potential, based upon how the process
7 was, to add board members, add officers, do things to increase
8 diversity? It sounds like that's what you're saying. Right?

9 A Well, as you stated earlier, the ethnic minorities
10 were already there. So if you weren't already in the business,
11 how were you going to bring them in? The legislature, those
12 folks never asked me my opinion because I would have asked
13 some of those questions.

14 Q Okay. And I guess my question -- you saw our very
15 first witness a long, long time ago, our cannabis law expert
16 who did a bunch of different mathematical models where he put
17 diversity variations up on the board, did you see those?

18 A Wasn't that a woman?

19 Q No. The cannabis law, that was a man.

20 A Okay.

21 Q Then there was a linguistic --

22 A Okay.

23 Q -- expert who was a woman.

24 THE COURT: He was the guy from Idaho, right?

25 MR. KOCH: That was diversity.

1 THE COURT: Oh, okay.

2 MR. KOCH: He was the guy from Denver.

3 THE COURT: Oh, all right. I'm sorry.

4 MR. KOCH: Who's now in Maryland. I think he's
5 teaching school there or probably by the time we finish this
6 thing.

7 BY MR. KOCH:

8 Q So do you remember seeing some of those models where
9 he put up diversity, he took out diversity and what happens to
10 the point total?

11 A Yes. Yes.

12 Q You would agree with me based upon the rubric that
13 the State used to assign 20 points for diversity, even if all
14 the top 10 in Las Vegas that we looked at in Exhibit 5004,
15 even if all 10 of those got zero points for diversity, it
16 would not give Nevada Wellness a license, Nevada Wellness
17 would not move to the top 10; right?

18 A That is correct.

19 Q Okay. So there are other factors that kept Nevada
20 Wellness out of the top 10 aside from diversity?

21 A And that being one of many.

22 Q Say that again?

23 A That being one.

24 Q Diversity?

25 A No. You're saying if you took these 20 points away

1 --

2 Q Right.

3 A -- there are 20 points -- that doesn't help Nevada
4 Wellness. I agree.

5 Q Okay. I just want to understand because that
6 certainly has been something there's been fight -- I think
7 people on this table have taken both sides of that position.
8 Diversity shouldn't have been considered or it should have and
9 we didn't do it right. And your position is it should have
10 been considered but we just didn't do it right?

11 A Correct.

12 Q All right. And there's some potential for
13 manipulation?

14 A Yes.

15 Q Was there any understanding that you had with
16 respect to adding a board member, was there any sort of tenure
17 requirement? Did they have to have been on at any point in
18 time in order to be qualified as a board member?

19 A For the whole process?

20 Q For diversity purpose.

21 A For diversity?

22 Q Let's just say for diversity.

23 A No. No, I -- for us, and I can't speak for
24 everybody else and I'm not here to pick them apart and
25 challenge them. My bone of contention -- let me preface

1 before I make my statement. People are going to do whatever
2 they need to do to win. I'm very experienced in that. But
3 it's the government's responsibility to make sure that there
4 is a fair process or as fair as it can be. So if people added
5 people to their board, got away with adding an officer and the
6 State saw it and did nothing, shame on them. Shame on the
7 person that did it, but shame on the State because it's their
8 responsibility at the end of the day to make sure we have a
9 transparent process so that everybody can say, yeah, you know,
10 I made a mistake, he made a mistake, they made a mistake, one
11 or two, chalk it up to next time, but not the whole process.

12 Q And what about that? Let's say somebody added a
13 minority officer the day before they submitted their
14 application, sent it in, they get credit for that minority
15 officer and they keep that officer on after they get their
16 license and that officer plays an important role in the
17 business, would you agree that that increases diversity in the
18 operation of a marijuana establishment in Nevada?

19 A No.

20 Q It does not?

21 A Because I don't believe Phil Peckman back there, who
22 is a friend of mine -- he may not be after today, but I
23 consider him that -- there is nobody going to run our
24 businesses but us. So if we have a volunteer board, advisory
25 board, community board, that is a specific purpose, at least

1 for Nevada Wellness Center. It's not for them, which may be
2 different from the public standpoint, to come in and say, hey,
3 I got a vote, I got -- do this and do that. That doesn't
4 happen in the real world.

5 Q Okay. And I guess I'm trying to understand. So
6 let's say Nevada Wellness got 10 licenses, opens 10 new
7 stores.

8 A Four will be enough.

9 Q Okay.

10 A Can you say four?

11 Q We'll go four. Let's say four. Let's talk about
12 that. Opens four new stores. Would that be more difficult
13 for you individually to manage those four stores?

14 A Sure.

15 Q So it would be more work. You'd probably need to
16 bring in some more people; right?

17 A Without question.

18 Q Bring in some more people to manage the process?

19 A Yes.

20 Q And maybe hiring an officer or something to take
21 care of finances or something like that; right?

22 A We have an in-house CPA now.

23 Q Okay.

24 A But yeah, possibly another one.

25 Q And by adding that person it might be a minority, is

1 that right?

2 A Yes.

3 Q Okay. And is it your testimony, then, that adding
4 an officer in that sort of a function to now be operating in
5 the marijuana industry would not be increasing minority
6 representation or diversity in the marijuana industry?

7 A Yes. And they would be an employee. So we would be
8 hiring employees. There are only three of us. That's Dr.
9 Mack, Andre and I that are the owners. We would be building
10 our business through hiring more employees. And would they be
11 diverse and ethnic? Probably, yes.

12 Q Okay. And why would they be? Why would you make
13 that consideration in hiring?

14 A Why would we not? We're going to look for the best
15 person --

16 Q Right.

17 A -- to fill our needs.

18 Q Okay. And so when you're doing that you consider
19 the community you serve. Let's say if you're in a
20 predominantly, say, Latino neighborhood, would you look to
21 potentially hire Latino employees?

22 A Yes.

23 Q And you think that that would be a consideration in
24 the hiring to reflect the community that you're located
25 within?

1 A Yes.

2 Q Okay. You've heard a lot of questions about
3 deficiencies and questions about compliance. Nevada Wellness
4 Center, has Nevada Wellness Center ever received a statement
5 of deficiency from the Department of Taxation?

6 A You're not going to believe what I'm about to tell
7 you. No.

8 Q Never?

9 A And I was gassed when Charlie sat here and said he
10 received thirty.

11 Q So you've never received one ever in inspections
12 taking place?

13 A Not to my knowledge. And I called the State a
14 couple weeks ago and said how many deficiencies has NWC
15 received? They said based on our records, zero.

16 Q So you've never received a statement of deficiency
17 and submitted a letter of correction for that deficiency?

18 A I'm just telling you what they told me.

19 Q And were you here when Ms. Cronkhite was here when
20 she testified about deficiencies?

21 A Yes.

22 Q And as she testified that every operation has
23 received a deficiency and if one has not she would have a
24 question about the inspectors?

25 A But she never met us, did she? Never even heard of

1 us.

2 Q She never heard of your company?

3 A No.

4 Q Oh, okay. All right.

5 A Which is good.

6 Q That is good. But sends inspectors out to your
7 company; right?

8 A Right.

9 Q And they've never once found a deficiency?

10 A I'm just telling you, you know, what they --

11 Q Who is there for the inspections when those take
12 place at your company?

13 A Me.

14 Q And you've talked to the inspectors?

15 A Yes.

16 Q And they've never found anything wrong with your
17 business?

18 A I'm telling you. And before me, the other guy back
19 there, you can drag him up here, Andre.

20 Q All right. Okay, very good.

21 A He doesn't want to come. Thank you.

22 MR. KOCH: No further questions.

23 THE COURT: Any of the other defendants or
24 defendants in intervention have questions for Mr. Hawkins?

25 MR. GRAF: Yes, Your Honor.

1 THE COURT: Mr. Graf.

2 DIRECT EXAMINATION

3 BY MR. GRAF:

4 Q Good morning, Mr. Hawkins.

5 A Good morning, Mr. Graf.

6 THE COURT: It's afternoon, Mr. Graf.

7 BY MR. GRAF:

8 Q I represent Clear River in this action. Do you know
9 who the owner of Clear River is, sir?

10 A No. Can you tell me?

11 Q It's Randy Black, Sr.

12 A Oh. He's hiring right now. No, I'm just kidding.

13 All right, go ahead.

14 Q I don't know about that, but he's not in the
15 jurisdiction, I know that.

16 A I know Randy very well.

17 Q Do you know who his daughter is?

18 A Tish Black?

19 Q Yes, sir.

20 A I don't know her personally. I know who she is.

21 Q So if I understand, your testimony is in the future
22 when your daughter is old enough --

23 A Uh-huh.

24 Q And by the way, I've met your daughter --

25 A Yes, you did.

1 Q -- and she is a fine young woman.

2 A Thank you very much.

3 Q You would be willing to put her on your advisory
4 board; correct?

5 A Oh, no, no, you mis-- you misstate.

6 MR. GENTILE: Objection to the form.

7 THE COURT: Overruled.

8 MR. GENTILE: It's compound. Does he want Tisha or
9 his daughter running it?

10 THE COURT: No, he's not going to put Tisha Black on
11 his board.

12 MR. GRAF: I'll clarify, Mr. Gentile. I apologize.

13 BY MR. GRAF:

14 Q So in the future --

15 A I know what you mean. It's okay. So what I was
16 saying is --

17 Q Frances; right?

18 A Peerless.

19 Q Peerless. Sorry.

20 A I would want my daughter to be able to benefit, to
21 leave a legacy. Part of the other attorney's question, I want
22 to have legacy.

23 Q So --

24 A Andre wants to have legacy. Mr. Mack might be too
25 old to have legacy, but that's --

1 Q Never too old.

2 A Well, he's 80, so. But the goal is to be able to
3 pass something down.

4 Q So is the goal to in the future put your daughter on
5 the board of this company that you own and operate?

6 A No. I want my daughter to be an owner --

7 Q Okay.

8 A -- not a board member.

9 Q Okay. And, but you don't -- is there anything wrong
10 with a man putting his daughter on an advisory board for a
11 company that he runs and operates?

12 A It depends on the man.

13 Q Okay. Do you know that Ms. Black is also the
14 president of the NDA?

15 A No. I don't belong to the NDA.

16 Q Okay. And do you know Mr. Flintie Williams?

17 A Flintie Ray?

18 Q Yes.

19 A He's hiding, too. Yeah, I know Flintie.

20 Q But you know him, don't you?

21 A I know him.

22 Q And you've been in this community since the '70s?

23 A A long time. Not long to me, but a long time.

24 Q Okay. And do you have any problem with seeking his
25 advice in running this company, a local company in the state

1 of Nevada?

2 A Are you saying Flintie is going to run a dispensary?

3 Q That he's on the board and providing advice and
4 consent to this company, do you have a problem with that?

5 A Let me make sure I understand what you're saying.
6 So you're saying Flintie is on Randy's board?

7 Q Uh-huh.

8 A And Flintie is going to direction to Randy on how to
9 run the business?

10 Q Sure.

11 A I'd say no, that will never happen, only because I
12 know Randy and I know Flintie.

13 Q That wasn't the question.

14 A Oh, I'm sorry, then I misunderstood.

15 Q I appreciate your response, Mr. Hawkins, but that's
16 not the question.

17 A Okay. So you're saying if Randy put Flintie on the
18 board --

19 Q Sure.

20 A -- and will Randy take advice? Could he take
21 advice?

22 Q So your response is that Mr. Black won't take the
23 advice?

24 A That's my response.

25 Q Okay. Mr. Hawkins, you've been here the whole time;

1 right?

2 A Except for two days.

3 Q Have you heard any testimony during all of this
4 process that the advisory board is somehow against the Nevada
5 Revised Statutes, NRS 86 that governs LLCs?

6 A No.

7 Q And you wouldn't have done it yourself if you
8 thought it was a violation of NRS 86; right?

9 A Done what?

10 Q Created an advisory board.

11 A We have an advisory board.

12 Q Oh, I know.

13 A And we --

14 Q And you don't think that that's illegal, do you?

15 A And we had one in the very beginning in 2014.

16 Q And you don't think that that's illegal, do you?

17 A No.

18 MR. GRAF: Okay. Thank you.

19 THE WITNESS: You're welcome.

20 THE COURT: Anyone else who's a defendant or a
21 defendant in intervention have questions for Mr. Hawkins?

22 Mr. Parker.

23 MR. PARKER: Just a couple, Your Honor.

24 THE COURT: Uh-huh.

25 THE WITNESS: I don't want you asking me no

1 questions. No.

2 MR. PARKER: I will tell you Mr. Kemp has said I
3 should not because you have done so well. I will tell you
4 that up front, Mr. Hawkins. And so I'm going to be very brief
5 because I learned through my tutelage that you typically don't
6 ask many questions of your client.

7 CROSS-EXAMINATION

8 BY MR. PARKER:

9 Q So in terms of taxes, is NWC paying taxes right now
10 for its sale of recreational marijuana?

11 A Yes.

12 Q So in terms of the State or the school district or
13 whatever this money, tax money may go, people buying --
14 citizens of Nevada or people visiting Nevada can buy
15 recreational marijuana?

16 A Yes.

17 Q And that tax money is being given to the State?

18 A Yes.

19 Q And if the State wants to give it to the school
20 district, you have no qualms with that?

21 A None.

22 Q Thank you. In terms of the time it took to bring
23 your lawsuit, you indicated that you got the scores in
24 December, is that correct?

25 A Yes.

1 Q How long did it take for you to actually get a
2 meeting with the Department of Taxation to discuss your
3 scores? Do you recall that?

4 A Months.

5 Q All right. After that -- that was sometime, I
6 believe, of 2019, after that do you recall asking for an
7 appeal?

8 A Yes.

9 Q Did the Department of Taxation refuse your appeal?

10 A Yes.

11 Q After that do you recall then authorizing your
12 counsel to file a lawsuit?

13 A Yes.

14 Q After you filed the lawsuit, do you recall the
15 Department of Taxation not agreeing to accept service of
16 process?

17 A Yes.

18 Q After you -- after the filing the service, do you
19 recall authorizing your counsel to request by order of the
20 Discovery Commissioner a preservation of evidence?

21 A Yes.

22 Q Do you recall how long it took for the Department of
23 Taxation to respond to that?

24 A I don't know if they responded.

25 Q Do you recall after receiving the order from the

1 Discovery Commissioner granting your request that the
2 Department of Taxation objected to that?

3 A Yes.

4 Q All right. And then after that do you recall
5 joining in in this injunction request?

6 A Yes.

7 Q All right. And that's the process you recall?

8 A That's what I recall.

9 MR. PARKER: All right. That's all I've got. Thank
10 you very much.

11 THE COURT: Thank you, Mr. Parker. Anyone else want
12 to ask any follow-up questions to Mr. Hawkins?

13 Thank you, Mr. Hawkins.

14 THE WITNESS: Thank you.

15 THE COURT: We appreciate you and thank you very
16 much for returning us to the point kind of discussion.

17 THE WITNESS: You're welcome.

18 THE COURT: Next witness.

19 MR. CRISTALLI: Your Honor, before Mr. Gutierrez
20 calls the next witness, the one issue we have -- we have a
21 subpoena for Chad Christensen for Fidelis Holdings and I made
22 representations to Your Honor that --

23 THE COURT: He was one of the people you told me
24 earlier will be here.

25 MR. CRISTALLI: No. I said that Mr. -- Chad was out

1 of the country and then you said have a client representative
2 here.

3 THE COURT: Okay. I may have said that.

4 MR. CRISTALLI: So we do. We do. We have Daniel
5 Stewart here who's prepared to testify, but Daniel leaves on
6 Wednesday. And I just wanted to make sure, because I don't
7 think Mr. Gutierrez now wants to call Mr. Stewart or a
8 representative from Fidelis, that I have --

9 THE COURT: Can I release Mr. Stewart?

10 MR. GUTIERREZ: Yes, you can, Your Honor.

11 THE COURT: Bye, Mr. Stewart.

12 MR. GENTILE: What about anybody else?

13 MR. CRISTALLI: And, Your Honor, just before we do
14 that --

15 MR. SHEVORSKI: He can't hear you, I guarantee it.

16 MR. CRISTALLI: Before we do that, we've complied
17 with having a client representative available for testimony.

18 THE COURT: I appreciate that.

19 MR. CRISTALLI: We don't anticipate getting another
20 request for Fidelis as a witness for the intervenors or the
21 State.

22 THE COURT: Does anybody want to ask Mr. Stewart any
23 questions before he leaves? Since no one wants to ask him
24 questions now, he's leaving.

25 MR. CRISTALLI: And that would satisfy all of our

1 requirements to have --

2 THE COURT: All the people in the room said it was
3 okay. And Mr. Hone is here this afternoon, he wasn't here
4 this morning, but he's here now.

5 MR. CRISTALLI: Okay. And there will not be another
6 request for a representative of Pisos?

7 THE COURT: Fidelis. Fidelis; correct?

8 MR. CRISTALLI: Fidelis. Correct. I'm sorry.

9 THE COURT: Okay. Next witness.

10 MR. GUTIERREZ: We're calling Ben Sillitoe.

11 THE COURT: Mr. Sillitoe, if you'd come up, please.

12 We're going to take a break. Sorry, sir, my staff
13 needs a break and I forget.

14 (Court recessed from 2:59 p.m. until 3:08 p.m.)

15 THE COURT: All right. Ready now?

16 BEN SILLITOE, DEFENDANT'S WITNESS, SWORN

17 THE CLERK: Thank you. Please be seated and please
18 state and spell your name for the record.

19 THE WITNESS: Ben Sillitoe. S-I-L-L-I-T-O-E.

20 THE COURT: Sir, you know there's water in the
21 pitchers, M&Ms in the dispenser behind you and there are tons
22 of exhibits. Counsel will help you through them if you need
23 help.

24 THE WITNESS: Thank you, Your Honor.

25 THE COURT: Mr. Gutierrez, you may proceed.

1 MR. GUTIERREZ: Thank you, Your Honor.

2 DIRECT EXAMINATION

3 BY MR. GUTIERREZ:

4 Q Good afternoon. Can you tell us your current
5 position?

6 A I'm the president of CLS Nevada, which is the
7 holding company owned by the company that acquired us last
8 year that operates the Nevada arm of a multi-state operator.

9 Q Can you explain that more?

10 A So I'm the co-founder of Oasis Cannabis, Serenity
11 Wellness Center, dba Oasis Cannabis. About a year ago we were
12 acquired by CLS Holdings, USA, which is a United States public
13 company traded on the OTCQB, also dual-listed now on the
14 Canadian Stock Exchange. And they retained me as the market
15 president for Nevada in charge of operations here.

16 Q And when did that transaction go through?

17 A June 28th, 2018 was the closing date.

18 Q So your company was a publicly traded company --
19 [inaudible].

20 A Yes. It became a publicly traded company upon the
21 consummation of that sale.

22 Q And how many dispensaries does Oasis Cannabis
23 operate?

24 A Just the one.

25 Q Where is it located?

1 A On Industrial Road in the City of Las Vegas.

2 Q And what was your role with the 2018 application
3 process?

4 A I was heavily involved with the preparation of the
5 application and our law firm and the application team.

6 Q And how many licenses did your company apply for?

7 A I believe it was seven.

8 Q Seven. Now, Mr. Sillitoe, did you -- were you a
9 part of the process in testifying in front of the State when
10 the regulations were adopted?

11 A No, actually I was really busy operating the company
12 at the time. I knew a lot about what was going on. I kept
13 abreast of it but I was not involved in that. I didn't make
14 any testimony.

15 Q When the regulations were adopted in February of
16 2018, did you provide any testimony or support of the
17 regulations?

18 A No, sir.

19 MR. GUTIERREZ: Can we go to Exhibit 5045,
20 previously admitted, specifically page 7.

21 BY MR. GUTIERREZ:

22 Q Mr. Sillitoe, do you see your name there?

23 A Oh, okay, I apologize. Yes. Thank you for
24 reminding me. Yes, that was at the Tax Commission hearing.

25 Q Okay. So this was at a Tax Commissioner hearing

1 where -- on February 27, 2018 where the State is adopting the
2 regulations that are in NAC453D, is that correct?

3 A I'm sorry, can you state the question again?

4 Q Sure. This is testimony you gave in front of the
5 Tax Commission when the Department is adopting the regulations
6 in what is now NAC453D; correct?

7 A Correct.

8 Q Okay. And then can we go through what you stated on
9 this? Do you see that in front of you?

10 A Yes. I'm refreshing my memory as we speak.

11 Q You state that the -- "Oasis Cannabis Las Vegas
12 stated that the regulation process for R092-17 was followed
13 and there were adequate opportunities for input from
14 interested parties." Do you believe that?

15 A Yes.

16 Q So you believe the Department had followed -- that
17 the regulation process was followed, is what you stated;
18 correct?

19 A Correct.

20 Q And then you said they had adequate opportunities
21 from interested parties. What does that mean?

22 A They had the working groups that were a part of the
23 process to come up with the regulations and there was -- six
24 months were spent on those.

25 Q So you believe that the Department in adopting

1 regulations was thorough in getting all the recommendations
2 from the industry and the Governor's Task Force?

3 A Yes.

4 Q Do you have any objections or as you sit here today
5 anything that you believe is wrong with the regulations?

6 A No. I don't think the regulations in their form are
7 bad. I don't think that the execution of the process
8 according to the way the regulations were written was done
9 right.

10 Q So your position is not necessarily -- it's not with
11 the statute or the ballot initiative or the regulations, it's
12 how those were played out with the actual application for
13 2018?

14 A Correct.

15 Q Okay. You also state that it's your opinion that
16 "the intent of the law was to allow the best operators to be
17 the ones to face the public because public perception is
18 important." What did you mean by that?

19 A I think at the time it was in reference to
20 cultivators who were claiming that they were entitled to a
21 license, and my point was that having operated a dispensary we
22 had experience in operating dispensaries and we were scored
23 high enough in 2014 to be awarded a license. And it was in
24 reference to the ability to put together a good application
25 and then the track record of operating a compliant dispensary.

1 Q Okay. And you authorized a lawsuit to be brought
2 against the State of Nevada sometime this year, is that fair
3 to say?

4 A Yes, I was part of the group.

5 Q And what is the relief specifically that you're
6 seeking from this injunction hearing?

7 A The process needs to be redone.

8 Q And when you say the process needs to be redone,
9 everyone submit 427 applications again?

10 A Applications and scoring, yeah, done completely
11 over.

12 Q And with the scoring, do you have problems with the
13 fact that independent graders were used?

14 A I don't necessarily have a problem with the fact
15 that independent graders were used, but I do call into
16 question whether or not they were adequately trained.

17 Q Okay. So hypothetically you want new scoring. Who
18 would you want to be doing the grading?

19 A Adequately trained personnel.

20 Q Okay. So 427 applicants resubmit their applications
21 is theoretically what you are looking for; correct?

22 A If that many people want to apply.

23 Q Okay. But specific to the hearing we're at today,
24 which is an injunction to stop a certain activity, can you
25 explain what your basis is for the injunction?

1 A Well, the licenses that were granted weren't done in
2 a fair and open manner, and so therefore they're not valid.

3 Q So stop the license winners from opening; correct?
4 That's your position?

5 A No, I don't really necessarily want to stop anyone
6 from opening per se if it was done in a fair manner. If it
7 was granted in a fair manner, then by all means I would like
8 them to open their businesses.

9 Q Okay. So Thrive, for example, my client, are you
10 aware of them?

11 A Yes.

12 Q And Essence is another one of my clients. Do you
13 know who they are?

14 A Yes.

15 Q Okay. So if Thrive wants to open their Sahara
16 location under their City of Las Vegas license, you have no
17 problem with that?

18 A I mean, I think that Thrive will probably obtain a
19 license in a new round of licensing that's done fairly and
20 they should be able to open their store at that time.

21 Q Okay. So after we go through a whole new licensing?

22 A Right.

23 Q How long do you think that would take?

24 A I can't say. Four months, maybe; three or four
25 months just like before.

1 Q And in that new hypothetical round of licensing,
2 would you want diversity to be scored?

3 A I have no problem with diversity being scored.

4 Q Okay. Do you believe diversity is directly and
5 demonstratively related to the operation of a marijuana
6 establishment?

7 A Not necessarily.

8 Q But you say you have no problem with it being
9 scored. Can you explain?

10 A Yeah, I have no concern with it, but I can't see how
11 simply having a diverse set of ownership means you're going to
12 operate a better dispensary, but I'm not opposed to it being
13 included. I was in support of AB422.

14 Q You were in support of AB422, which authorized --
15 which added an amendment to add diversity to the medical
16 marijuana portion; correct?

17 A Correct.

18 Q You never objected to that being a part of this
19 process?

20 A No.

21 Q Okay. With the -- has your company tried to buy a
22 license?

23 A We've had talks but we've never entered into any
24 agreement to purchase a dispensary.

25 Q What do you value a license at? And specifically

1 we'll use the City of Las Vegas, for example.

2 A Well, that's hard to say. I mean, there are a lot
3 of things that come into play with regard to that. It's not
4 easy to just say a license is worth X, so there are a lot of
5 nuances. I'd need more details to be able to give you an
6 answer there.

7 Q Is your company looking for a license in the City or
8 the County? What specific jurisdiction?

9 A We applied in seven jurisdictions, all with
10 significant populations.

11 Q Now, would your company be looking for a -- let's
12 say hypothetically was able to buy a license in the City of
13 Las Vegas for a million dollars. Would it do that?

14 A I can't say for sure. We are -- now we have a board
15 of directors. I'm not sitting on that board of directors.
16 And so that would be a strategy decision that I would have to
17 take up with them.

18 Q Let's say a \$100,000. If someone was fire selling
19 the license, would you buy that license from them?

20 A I would wonder why they would want to sell it for
21 \$100,000 and if it's worth even anything.

22 Q Okay. Hypothetically, though, you would -- let's
23 say your company did buy a license. Would you still be
24 pursuing this lawsuit?

25 A I can't say for sure whether we would be or not.

1 Q Is this process harming any of your existing
2 locations or dispensaries, this litigation?

3 A No.

4 Q And the reason you want to redo the process and get
5 more licenses is because you're looking to obtain more
6 revenue, increase revenue for the company, is that fair to
7 say?

8 A Correct. And also to maintain our market share and
9 be able to continue competing. As a single location we are at
10 somewhat of a disadvantage to those who have multiple
11 locations. So staying a single location while other stores
12 are adding half a dozen or more, that puts us at a significant
13 disadvantage.

14 Q Got it.

15 A It's not necessarily to increase revenue. I'm not
16 of the opinion that new stores means more revenue for
17 everyone.

18 Q Increased market. Maintain your position in the
19 marketplace, market share, is that correct? You're nodding
20 your head. Is that a yes?

21 A That is a yes.

22 Q And now we've talked about taxpayer revenue and
23 that's important; correct?

24 A It is important.

25 Q You believe that that was the intent of the ballot

1 initiative; correct?

2 A No. The intent of the ballot was to legalize
3 cannabis. I think a side benefit of that was the increased
4 tax revenue and the State has seen over 70 million dollars in
5 the last fiscal year of cannabis taxes, in addition to another
6 30 million dollars in State sales taxes. So the ballot
7 initiative's desire to increase taxes for the State has been
8 satisfied through the Early Start program and the 61
9 dispensaries that are currently in existence.

10 MR. GUTIERREZ: Okay. Can we go to 5043, the ballot
11 question.

12 MR. CRISTALLI: What's the number? Oh, I'm sorry.

13 MR. GUTIERREZ: And specifically -- I believe this
14 has already been admitted.

15 THE CLERK: Yes.

16 MR. GUTIERREZ: Page 17.

17 BY MR. GUTIERREZ:

18 Q It says, "Argument for Passage." Do you recall
19 reading this when the ballot question was out?

20 A Yes.

21 Q The third bullet point up there, what does it say?

22 A "It will generate millions of dollars in new tax
23 revenue to support K to 12 education."

24 Q This is what was sold to the public when Ballot
25 Question 2 was passed; correct?

1 A It's part of it.

2 Q But that's what it says; right?

3 A Sure. It's part of it.

4 Q So if a voter is reading this and they believe I
5 don't use marijuana but I believe this is going to help our
6 schools, I'm going to vote for that?

7 A Correct. Now, it didn't make a difference. The
8 budget stayed the same. The schools aren't being given new
9 money from cannabis, they're replacing money. There's a
10 funding formula that exists that caps the amount of money that
11 goes to the schools regardless of how much cannabis money
12 flows into the system. So all we've done is replace other
13 money and the cannabis money has gone into the school system
14 and there is money left over as a result.

15 So it doesn't mean to say that more cannabis tax
16 revenue would mean more money for the schools because we all
17 know that that's not the case. Until the funding formula is
18 changed for the students, they won't have any additional
19 money, no matter if we're making a billion dollars in tax
20 revenues. Our schools will still be broke and the deans will
21 still be out of jobs and it has nothing to do with the amount
22 of money raised by the cannabis industry.

23 Q Wasn't that just addressed by the last legislature?

24 A Well, it still hasn't been fixed yet, obviously.

25 Q Okay. And we're still talking about the purpose of

1 the statute; correct? The purpose was to generate --

2 A The purpose of the statute was to provide personal
3 liberty to Nevadans and people visiting here that wanted to
4 purchase cannabis without being subjected to, you know, a
5 criminal justice system that wasn't fair.

6 Q Understood.

7 A And then one of the side benefits, the third bullet
8 point, not the first bullet point, explains how it will
9 generate millions of taxes. So if it was the most important
10 thing, it might have been the first bullet point.

11 Q Okay, fair enough. Let's go to the bottom where it
12 says, "The initiative provides for a 15 percent excise tax on
13 marijuana which will generate an estimated 20 million
14 annually." Correct?

15 A That is correct.

16 Q What's an excise tax?

17 A An excise tax is the value -- a tax on the value of
18 marijuana, on the wholesale value set by the market analysis
19 conducted by the State.

20 Q So the more people buying marijuana, the more taxes
21 raised; correct?

22 A That is correct, to a certain extent.

23 Q The next sentence says, "This will cover the cost of
24 enforcing regulations. It will also support K through 12
25 education in the State." Correct?

1 A Correct.

2 Q "In addition to this tax, legal marijuana sales will
3 generate more than 30 million annually in state and local
4 sales tax revenue." Correct?

5 A It looks like we've by far beaten that estimate
6 already with just 61 dispensaries.

7 Q Correct. And these new round of dispensaries are
8 putting -- or new round of licenses are putting dispensaries
9 where there really aren't -- haven't been; correct?

10 A In the cases where they were underserved, it could
11 grow the market, sure.

12 Q Thank you. So the next page, page 18, it talks about
13 generating tax revenue and creating thousands of jobs in the
14 state. We've talked about that; correct? And there's a
15 footnote 2. If you could go down to footnote 2, have you seen
16 this study? It's a fiscal benefits analysis, July 2016 by RCG
17 Economics. Have you read that study?

18 A I briefly recall looking through it. I don't know
19 if I read the study in its entirety.

20 Q It's very thorough and it does talk about these
21 issues; correct?

22 A To my knowledge, to my recollection it does.

23 Q And there was even a supplemental study done in
24 October of 2018. Are you aware of that?

25 A Perhaps. I don't know.

1 Q Okay. If this was one of the intents of the statute
2 and of the public, don't you believe that by preventing these
3 61 licenses from opening and operating and restricting revenue
4 that we are harming the intent of the public by --

5 A I don't believe so.

6 Q Let me finish the question. Harming the intent of
7 the public by not allowing this tax revenue to be generated?

8 A No, I don't believe so. It doesn't mean -- just
9 because you open new stores doesn't mean additional taxes will
10 be generated.

11 Q So you're of the position that others dilute the
12 market?

13 A Well, if there are underserved areas that are
14 getting new stores, then perhaps it will help grow the market
15 there. But to just place new stores in areas that are already
16 served by the existing dispensaries doesn't mean that you will
17 just automatically increase your tax base. It will take time
18 to grow the market and the market will grow with the existing
19 number of dispensaries as well.

20 Q Okay. But every month that we go by and the State
21 is not generating income from these additional licenses,
22 there's a loss to the public; correct?

23 A No. The public never had that in the first place,
24 so they're not losing anything.

25 Q So they never had it. So let's us my client, Thrive.

1 They were ready to open in May.

2 A Okay.

3 Q Correct. And let's hypothetically say they would
4 have generated a million dollars in taxable revenue per month.

5 A I don't know if that would have come from Nevada
6 Wellness Center or if that would have come from Oasis
7 customers or some of the other dispensaries that are just up
8 the street from there like The Source or Essence or Relief.
9 You know, I can name six stores within a couple miles of that
10 new location, so it's hard for me to say whether it would have
11 been new customers who just all of a sudden decided to stop
12 buying from the black market because there's a new store down
13 the street from another new store. That's a really hard
14 conjecture for me to make.

15 Q I still don't understand why you want new licenses
16 if it's just going to dilute the market.

17 A I want to maintain my market share. If there will
18 be double the number of licenses, then I'd like to double my
19 number of licenses, too.

20 Q So we've been here for two months just because
21 people want to maintain their market share? You're saying
22 you're not going to have any additional revenue generated?

23 A No, I didn't say that. I said it will take time to
24 grow revenue. You don't just automatically bring people from
25 the black market just because a new store opens. It takes

1 time.

2 Q Okay.

3 A And so time will grow the market. The number of
4 stores doesn't necessarily grow the market. There are other
5 reasons why people choose to not purchase cannabis legally
6 right now and the number of stores in their neighborhood is
7 the least of them at this point.

8 Q Now, can you articulate what the harm is to your
9 company if my client, Thrive, is allowed to open on Sahara?

10 A Well, then the unfair licensing process will have
11 been allowed to continue and there would be harm to not only
12 my store but to the public, the people of Nevada who expect a
13 fair licensing process.

14 Q Any harm to your store specifically?

15 A I can't say.

16 Q Can't say?

17 A I don't know what it would be, if anything.

18 MR. GUTIERREZ: Thank you. I'll pass the witness.

19 THE COURT: Any more defendants or defendants in
20 intervention wish to ask Mr. Sillitoe questions?

21 Mr. Koch.

22 DIRECT EXAMINATION

23 BY MR. KOCH:

24 Q 'Afternoon, Mr. Sillitoe. I know we just met in the
25 hall, and I think you know my brother from way when, so --

1 A Good afternoon, Mr. Koch.

2 Q -- good to meet you this afternoon.

3 Mr. Sillitoe, you're here on behalf of Serenity
4 Wellness; is that right?

5 A That's correct.

6 Q Okay. And Serenity --

7 MR. KOCH: If we could go to Exhibit 5029. Has that
8 been admitted?

9 THE COURT: Is it a proposed exhibit?

10 Any objection to 5029?

11 MR. CRISTALLI: I don't know what it is.

12 MR. KOCH: It's Serenity's Secretary of State
13 printout. It's just a printout from --

14 MR. CRISTALLI: No objection.

15 THE COURT: Be admitted.

16 (Defendants' Exhibit 5029 admitted)

17 BY MR. KOCH:

18 Q We'll put it up on the board for you. Exhibit 5029
19 is the Nevada Secretary of State's printout for Serenity
20 Wellness Center LLC, which shows -- lists the information for
21 Serenity. This is the entity that applied for the license; is
22 that right?

23 A That's correct.

24 Q And listed there the registered agent is Derek
25 Connor. You see that?

1 A Yes.

2 Q He's still the resident agent for the company?

3 A That's correct.

4 Q That's -- he worked with Amanda Connor?

5 A That's correct.

6 Q And we've talked about Amanda Connor. Did Amanda
7 Connor represent Serenity for purposes of the application
8 process?

9 A No, she didn't.

10 Q Okay. But Connor & Connor, that law firm, is that
11 your registered agent?

12 A Yes.

13 Q Okay. On the bottom of that page there's a listing
14 of the officers, and the only officer listed, the one active
15 one in that case Alternative Solutions LLC. Was that the only
16 manager of the company when Serenity applied?

17 A Yes. That was our holding company prior to selling
18 to CLS Holdings USA. So that is the -- that entity is a
19 wholly owned subsidiary of the public company.

20 MR. KOCH: All right. And then let's go to Proposed
21 Exhibit 5030. It's just the Secretary of State for
22 Alternative Solutions.

23 THE COURT: Any objection to 5030?

24 MR. CRISTALLI: No objection.

25 THE COURT: Be admitted.

1 (Defendants' Exhibit 5030 admitted)

2 MR. CRISTALLI: I haven't seen it yet, but I'll take
3 Mr. Koch's word that that's what it is.

4 BY MR. KOCH:

5 Q Just as exciting as the last one. So this is the
6 Secretary of State printout for -- this is the holding
7 company, as you said?

8 A Yes.

9 Q All right. Once again Derek Connor is the resident
10 agent; is that right?

11 A Right.

12 Q Okay. And the officer listed there is CLS Holdings
13 USA, Inc.; is that right?

14 A That's fair.

15 Q And then Debra Freeman, is that a current or -- it
16 looks like historical officer.

17 A That's a historical.

18 Q All right. So as of right now the only manager is
19 CLS Holdings USA?

20 A That's correct.

21 Q That's a public company?

22 A That's correct.

23 MR. KOCH: Last one, Proposed 5031, Secretary of
24 State for CLS Holdings.

25 THE COURT: Any objection?

1 MR. CRISTALLI: No objection, Your Honor.

2 THE COURT: Be admitted.

3 (Defendants' Exhibit 5031 admitted)

4 BY MR. KOCH:

5 Q All right. And this printout, CLS Holdings USA,
6 Inc., this is the public company that you've been referring
7 to?

8 A Yes.

9 Q Here you've got looks like a registered agent, it's
10 a registered agent corporate type of commercial entity; right?
11 Is that right?

12 A Yeah.

13 Q And then the officers listed below it is Jeffrey
14 Binder and Frank Tarantino; is that right?

15 A Yes.

16 Q They're both listed in Miami, Florida; is that
17 right?

18 A Correct.

19 Q Ask you to take a look at Proposed Exhibit 5033,
20 which is corporate structure that you guys have for --

21 MR. CRISTALLI: Comes from the attachment?

22 MR. KOCH: From the exhibit -- the application.

23 THE COURT: 5033? What happened to 5032?

24 MR. KOCH: I just thought I'd skip it.

25 THE COURT: Okay.

1 MR. KOCH: Do you want to see it? It's redacted.

2 MR. CRISTALLI: Okay. No objection.

3 THE COURT: Be admitted.

4 (Defendants' Exhibit 5033 admitted)

5 BY MR. KOCH:

6 Q All right. So for Exhibit 5033 is a corporate
7 structure chart that came from Serenity's application. Are
8 you familiar with this chart?

9 A Yes.

10 Q And did you help the preparation of this chart?

11 A Yes.

12 Q This chart shows Serenity Wellness Center LLC d/b/a
13 Oasis Cannabis. That was the applicant in this application?

14 A That's correct.

15 Q The individuals that are redacted there below, those
16 are all officers, it appears, of Serenity; is that right?

17 A That is correct.

18 Q Okay. Do you know why they're redacted for purposes
19 of this submission?

20 A They're in place, so I don't think their names need
21 to be on here.

22 Q All right. We can -- I won't ask you more about
23 that, but come back if we need to.

24 Up above, then, it shows -- well, on the right-hand
25 side, bottom right, there's "Wholesale Operations." Serenity

1 has wholesale operations; is that right?

2 A That's correct.

3 Q Those entities, did they apply for licenses, also?

4 A No, they did not.

5 Q Just Serenity Wellness Center d/b/a Oasis Cannabis
6 for retail?

7 A Yes.

8 Q Up above that next level is Alternative Solutions.
9 That's the one we looked at the printout for; is that right?

10 A That's correct.

11 Q And it says, "Operations managed by" redacted "CEO
12 and co-founder." I don't think that information is
13 confidential. It's --

14 A That's me.

15 Q That's you. Okay. So you're listed there.

16 A Yes.

17 Q All right. Good. So if we took those black
18 redactions off, your name would be found in --

19 A That's correct.

20 Q Perfect. Up above that, CLS Holdings USA, Inc., the
21 national parent company, "100 percent owner of Nevada
22 operations pending ownership transfer." That's the public
23 company we're talking about; right?

24 A That's correct.

25 Q And the individuals listed there, board chairman and

1 CEO, who is that?

2 A That's Jeffrey Binder

3 Q Okay. Board member. Who's that?

4 A Andrew Blascho [phonetic].

5 Q And the next board member?

6 A Frank Karetski [phonetic].

7 Q And chief financial officer?

8 A That would be Frank Tarantino.

9 Q All right. And this is the current structure of
10 your company?

11 A Frank Tarantino's no longer with us. We have a new
12 CFO.

13 MR. KOCH: All right. Go to Proposed 5035, although
14 it may have been admitted.

15 THE CLERK: It has been admitted.

16 MR. KOCH: Yeah. [Unintelligible] 5035.

17 BY MR. KOCH:

18 Q And 5035, do you recognize this letter, Mr.
19 Sillitoe?

20 A I do.

21 Q What is this letter?

22 A Well, we had a -- we had already completed the sale
23 pending the ownership transfer approval. CLS Holdings
24 purchased 10 percent of our company first, and we submitted
25 the ownership transfer request subsequent to that and worked

1 for months to try to get that done. But that was a very
2 difficult process to complete because of the lack of resources
3 the Department of Taxation had towards ownership transfers.
4 And so when the application period came up we wanted to
5 disclose to the State that we had completed the transfer and,
6 even though the ownership of record with the State was
7 different, we wanted to submit the actual ownership and make
8 sure that it was clear to -- you know, to everyone reviewing
9 the applications that these were the new owners even though it
10 doesn't match the ownership of record.

11 Q Okay. And the State --

12 MR. CRISTALLI: Mr. Koch, is 5035 a stipulated
13 admission on an exhibit?

14 THE COURT: It was admitted earlier.

15 MR. CRISTALLI: Thank you, Your Honor.

16 THE COURT: July 1st.

17 MR. CRISTALLI: Thank you.

18 THE COURT: Thank Dulce.

19 MR. CRISTALLI: Thanks, Dulce.

20 BY MR. KOCH:

21 Q So we've heard some testimony about that from the
22 Department. The ownership transfers will take some time to
23 process from the State's side; right?

24 A Correct.

25 Q And the State would keep -- or the Department would

1 keep a list of all owners, officers, and board members that
2 had been submitted to the Department and track those; is that
3 right?

4 A Yes.

5 Q Okay. And if Serenity or that other entity were
6 submitting proposed change of ownership, it would have to
7 submit that to the State, then the Department would review it
8 and approve or deny that?

9 A Correct.

10 Q And as part of that transfer you'd have to list the
11 individual owners who would be proposed, who the new owners
12 would be, and provide full information to the State?

13 A Yes.

14 Q And that was all for purposes of clarity so the
15 State can make sure the dispensary is being run and operated
16 properly by individuals who it could consider and vet; is that
17 right?

18 A That is correct.

19 Q And this letter -- who wrote this letter? Is this a
20 letter from you?

21 A I wrote that letter.

22 Q All right. So the CEO, co-founder would be, again,
23 if you pulled off the redaction, it'd be Ben Sillitoe down
24 there; is that right?

25 A Yes.

1 Q Okay. And you were referring to the transfer or the
2 purchase from CLS Holdings. And I want to ask a question
3 about the second paragraph, where it says, "All the former
4 owners and founders of Oasis Cannabis are now stockholders in
5 CLSH, and together they own about 29 percent of the
6 outstanding shares of the public company. We have included
7 information from a few significant stockholders that were part
8 of the previous ownership group. The stockholders who are
9 included are" redactions. "The remaining owner information
10 contained in this application relates to officers and board
11 members."

12 So let me ask you just a couple questions about
13 that. The prior owners and founders of Oasis now owned as of
14 the date of this letter 29 percent of the company; is that
15 right?

16 A That is right.

17 Q Who owned the rest of the 71 percent?

18 A The board members at CLS and institutional investors
19 and I assume some retail investors, as well.

20 Q Okay. How many shares outstanding did CLS have as
21 of the date this letter was written?

22 A I believe it was close to 125 million. But I'm not
23 -- I'm not certain.

24 Q Do you know how many shareholders CLS had as of the
25 date of this letter?

1 A I do not.

2 Q 125 million shares. You think it was more than
3 125 shareholders?

4 A It's pure speculation if I say anything.

5 Q So you don't know if it was more than a thousand or
6 less than a thousand?

7 A I have no idea.

8 Q Have you ever reviewed the shareholder list for CLS
9 Holdings?

10 A I have -- I've reviewed the public filings that
11 show the significant shareholders, insiders, and people over
12 10 percent, but I have not reviewed a full shareholder list.

13 Q So the public filings have a cutoff of 10 percent;
14 is that right?

15 A I believe so.

16 Q Do you know why it has that cutoff?

17 A I don't know why. I'm not an SEC attorney. But I
18 would guess that it has something to do with how practical it
19 is to list everyone.

20 Q Okay. Do you know who is redacted here when it
21 says, "The stockholders who are included are," blank, blank,
22 blank, blank, blank?

23 A I think so.

24 MR. KOCH: Okay. I don't know if there's a
25 confidentiality issue with this. I don't think so. But I'm

1 happy to ask Mr. Cristalli first if he has any objection in
2 disclosing those names.

3 MR. CRISTALLI: Your Honor, I think we submitted our
4 Attachment A, which would have all that relevant information
5 that was redacted. So Mr. Koch I think has access to that
6 material.

7 THE COURT: But that would be me that you're asking
8 about, so do you want me to have it, or not?

9 MR. CRISTALLI: Yes, Your Honor. That's fine.

10 THE COURT: Then -- okay. So answer, please.

11 BY MR. KOCH:

12 Q So can you tell us who those names are, the
13 insufficient stockholders.

14 A Well, we asked everybody to do it. Every member
15 that made up that 29 percent, we asked them to be a part of
16 it. So it was only those that were willing to have their
17 names listed who ended up on the application. And so I don't
18 know if my previous partners would be comfortable with me
19 disclosing it, but since this SB 32 came out, then I guess
20 it's all public anyways. Todd Swanson, he's a local
21 orthopedic surgeon; Debra Freeman, one of my founding
22 partners; Archie Perry, who is a significant stockholder, is
23 probably our largest passive stockholder; and Thomas Kim.

24 THE COURT: So was it a cash or a stock sale?

25 THE WITNESS: Both.

1 THE COURT: Part cash, part stock?

2 THE WITNESS: Yes.

3 BY MR. KOCH:

4 Q Okay. And were there some among the 29 percent of
5 the shareholders who did not want their names to be listed in
6 the application?

7 A Yes.

8 Q And so they weren't listed?

9 A That's correct.

10 Q Okay. Do you know if they were ever -- the
11 Department was ever notified of their ownership of part of
12 that 29 percent?

13 A Absolutely. Every owner was approved by the State
14 of Nevada.

15 Q So they were approved, but they weren't put on the
16 application.

17 A That's because we had sold the company at that time
18 and they felt they were only stockholders and they had no
19 obligation to list their names.

20 Q Okay. So you didn't -- some of these individuals
21 thought as stockholders they did not need to list themselves?

22 A That's correct.

23 Q They owned equity in the company, though; right?

24 A Yes. Much less than 5 percent in some cases.

25 Q All right. And the 5 percent you thought was of

1 significance?

2 A Yes.

3 Q Why?

4 A Because we were directed to only include those over
5 5 percent.

6 Q That was part of the regulations; correct?

7 A I believe so.

8 Q And do you believe that that was a reasonable cutoff
9 for determining how could or would not be listed?

10 A I'm not making a judgment on whether it reasonable
11 or not. I only did what I was told.

12 Q Okay. Did you ever provide a shareholder list to
13 the Department irrespective of the fact that there's this
14 5 percent cutoff?

15 A I don't believe we did.

16 Q Okay. So you never said, I know there's a 5 percent
17 but I want to make sure each owner of our company is
18 background checked so here's the full shareholder list?

19 A Had the Department requested that we absolutely
20 would have done so.

21 Q Okay. So the Department never requested -- if they
22 requested it today and they said, we want to run a background
23 check on every one of your shareholders, you'd provide that;
24 right?

25 A We would.

1 Q Okay. And do you expect them to be able to complete
2 that task of background checks?

3 A I don't take anything away from the ability of the
4 Department of Taxation to accomplish difficult things.

5 Q All right. So difficult things. What about -- how
6 many shares of CLS Holdings change hands in a typical day?

7 A Oh, I think we do a couple hundred thousand in
8 volume every day.

9 Q All right. And so if somebody buys a share today,
10 you submit the shareholder list to the Department, they sell
11 that share of stock tomorrow, and then next week that
12 shareholder list will look different; right?

13 A It's very likely.

14 Q Okay. So if the Department asked you to submit a
15 shareholder list, it would depend on which say of the week or
16 month or year that shareholder list that was submitted, that
17 would change who was on there; right?

18 A I believe so.

19 Q Okay. And do you believe -- somebody said the
20 Department's capable of extraordinary feats that may seem
21 impossible. But if you submitted a shareholder list to them
22 every day, do you think they'd complete a background check on
23 each of those individuals on the shareholder list by let's say
24 the next day?

25 A I mean, I can't see how logistically they could

1 accomplish it by the next day.

2 Q What about if you actually submitted a weekly
3 shareholder list? Could that be accomplished?

4 A I can't say. I don't know.

5 Q Do you -- you still own stock in the company;
6 correct?

7 A I do.

8 Q If a shareholder in Canada sitting up there in
9 Ottawa buys 10 shares of CLS Holdings stock and they call you
10 up, say, Mr. Sillitoe, I think we should make some changes in
11 how the company is run, are you going to listen to that
12 shareholder?

13 A No. I report to the board of directors of the
14 company.

15 Q Okay. And have you had any -- strike that.

16 So as of now you're not aware of any minor
17 shareholders, less than 5 percent, that have been submitted
18 for the Department to conduct background checks; is that
19 right?

20 A Well, that's not necessarily true, because everyone
21 who owned stock in the previous company has been through a
22 background check.

23 Q Okay.

24 A And there are many -- well, we had maybe 12 members,
25 I think, of the previous company, and each one of them has

1 been through a background check, and most of them are less
2 than 5 percent.

3 Q Right. So as of now there's some prior owners that
4 continued on as owners, and they were background checked when
5 they got the medical certificate; correct?

6 A Correct.

7 Q And that background check is still in place today;
8 right?

9 A I assume so.

10 Q And the Department needs to run that background
11 check again after some period of time; is that right?

12 A Yes. I guess. If that's what you're telling me.

13 Q And that background check, do you know what that
14 entails?

15 A I do not.

16 Q Do you know if fingerprints are required?

17 A I believe so.

18 Q Currently do you have any role with respect to
19 communications with CLS Holdings USA shareholders as far as
20 reports or releases that go to them?

21 A No.

22 Q Have there been any notices to shareholders of CLS
23 Holdings that they may need to submit to background checks as
24 part of their ownership of shares of --

25 A I'm not aware.

1 Q The 5 percent rule or regulation we've talked about
2 that's found at NAB 453D.255, you were aware of that
3 regulation at the time that this application was prepared and
4 submitted?

5 A I believe so.

6 Q Because that was passed in January or February,
7 adopted in 2018; right?

8 A Yes.

9 Q Was that fairly well known in the industry, that
10 there's a 5 percent threshold?

11 A I don't know if that's fairly well known.

12 Q Among public companies do you believe that that's
13 fairly well known?

14 A I think that it's probably well known among -- or at
15 least known among who needs to know at public companies.

16 Q Is there any rule against a public company owning a
17 marijuana establishment in the state of Nevada that you're
18 aware of?

19 A Not that I'm aware of.

20 Q Do you believe that there should be a rule against
21 public companies from owning marijuana establishments?

22 A No.

23 Q That's probably -- I'd be surprised if you said yes.
24 I never know. Gotta ask.

25 Let me ask you about the scores for Serenity here.

1 You're aware of the scores that Serenity received as part of
2 this application?

3 A Yes.

4 MR. KOCH: And if we can go to Exhibit 5004. Good
5 job, Brian. And we're going to look at the first four.

6 BY MR. KOCH:

7 Q [Unintelligible] in Las Vegas; is that right?

8 A That's correct.

9 Q And if we can go to the bottom I believe is Las
10 Vegas. What place did Serenity come in in Las Vegas?

11 A I don't recall.

12 Q Forty-sixth; does that sound about right?

13 A It looks right on here.

14 Q Okay. We can zoom it in. I'm having a hard time
15 seeing it.

16 Okay. Forty-sixth, with 180.17 points; is that
17 right?

18 A That's correct.

19 Q So that was about 28 points short of getting into
20 the top 10, it looks like; correct?

21 A Yes.

22 Q Were there any -- as you sit here today do you
23 believe that Serenity was misscored? After you've seen the
24 information related to Serenity were there any misscorings
25 that you believe should --

1 A I don't have enough information to make that
2 determination.

3 Q And if we look at North Las Vegas, couple sections
4 down, we can look at thirty-ninth place. Serenity also
5 applied in North Las Vegas; correct?

6 A Correct.

7 Q And same score, 180.17; right?

8 A Yes.

9 Q And 214 is the cutoff there. So about 34 points
10 out; is that right?

11 A I'm not great at math without a calculator, but I
12 think you're right.

13 Q Okay. This lawsuit, do you believe that -- are you
14 anticipating that the Court will award Serenity a license as a
15 result of this lawsuit?

16 A I can't say what the outcome of this lawsuit will
17 be.

18 Q Okay. And I won't ask you to talk about your
19 communications with counsel, but surely you must have thought
20 about why we're filing this lawsuit and what was the purpose.
21 of filing this lawsuit.

22 A Well, the whole process was done without
23 transparency, without adequate training for the people
24 involved, and without clear scoring mechanisms that were
25 discussed with us afterwards. We had no idea why we scored

1 what we scored, were there errors that could have been
2 addressed, could more information have been requested as the
3 State indicated they would request in the application process.
4 And none of those things turned out to be true. So we believe
5 that it was not done in the proper manner and needs to be
6 thrown out, as Frank said, and redone.

7 Q So the relief that Serenity would like as a result
8 of this lawsuit is to just throw out the old process and start
9 again?

10 A Yes.

11 Q Would that be preparation of brand-new applications?

12 A You know, I don't know if we would prepare brand-new
13 applications. We might, you know, secure locations and do
14 more work with regard to that. But I don't think that we
15 would draw up the applications and start from scratch.

16 Q And with respect to securing locations, what if the
17 State came back and said, all right, we're doing brand-new
18 applications, just like last time you don't need a location,
19 just submit "to be determined," something like that, that be
20 -- change the outcome at all with respect to locations?

21 A I can't say whether or not it would.

22 MR. KOCH: Okay. In fact if we go to Exhibit 303.
23 I know this one's been admitted, so I think we're good there.
24 BY MR. KOCH:

25 Q This says a score sheet or the tracking sheet the

1 State has provided. And have you ever seen this before today?

2 A I have not.

3 Q If we go to Bates Number 41840, this has --

4 MR. KOCH: We're going to go down to the bottom,
5 Brian, where Serenity Wellness has its entries.

6 BY MR. KOCH:

7 Q Serenity is listed there as [unintelligible] from
8 RD322 to 328. You're aware of those numbers being assigned to
9 Serenity?

10 A They're familiar.

11 Q And the address that was submitted as part of
12 Attachment A for Serenity on each of those applications, can
13 you read what it says on 322.

14 A "To be determined."

15 Q All right. The same for the rest down to 328;
16 correct?

17 A Correct.

18 Q So that's what Serenity submitted, to be determined.
19 It did not submit a specific location; correct?

20 A That is correct.

21 Q You understood that that was acceptable; right?

22 A Yes.

23 Q It would not discount or disqualify Serenity from
24 obtaining a license to submit to be determined; is that right?

25 A That was my understanding.

1 Q And the process as we understand it is that a
2 conditional license would be awarded and then the applicant or
3 successful applicant would work with the jurisdiction or
4 locality to secure a final location that would be approved
5 both by the jurisdiction and then finally by the Department.
6 Did you understand that?

7 A That was my understanding.

8 Q And let me ask you this last thing. Question 2, you
9 talked about your understanding of why that question -- what
10 it was really asking. And you said it's personal liberty, the
11 ability to use marijuana products; is that right?

12 A I believe that, and to eliminate crime or reduce
13 crime.

14 Q So to get rid of black market or illegal sales of
15 marijuana, allow it to be regulated in a manner to eliminate
16 or at least limit crime in that area; correct?

17 A Nevada has a great track record of regulating things
18 which would otherwise be illegal, and it has shown to reduce
19 crime and make it safer for people who would do it without
20 regulation.

21 Q Right. So you're talking about maybe gaming?

22 A Prostitution.

23 Q Prostitution. Other areas that maybe don't fly in
24 other states, but Nevada decided let's try it?

25 A It's kind of our thing.

1 Q All right. And marijuana -- we followed some other
2 states, and some other states are now following us. You're
3 aware of that; right?

4 A Yes.

5 Q And Nevada has adopted regulations with respect to
6 recreational marijuana. Do you expect those regulations will
7 change over time?

8 A Oh, yeah. They continue to evolve all the time.

9 Q They'll hopefully improve; right?

10 A They have only improved since the beginning.

11 Q Good. Good. And same goes -- gaming regulations,
12 you're aware that gaming regulations over time or statutes
13 have improved or changed; right?

14 A I'm not an expert in gaming, but I assume that seems
15 like it would be reasonable.

16 Q And you would expect that over the passage of time,
17 10 years from now the regulations relating to the regulation
18 and licensing of marijuana may be very different from what we
19 see today?

20 A I would expect so.

21 Q And if the Department of Taxation were to adopt a
22 new process -- let's say two years from now they say, we're
23 going to submit -- we're going to allow for new applications.
24 We're going to allow people to submit new applications, that
25 those rules and regulations may be different the next time

1 around than they were this time?

2 A They may be.

3 Q And they may learn from this time and say, well,
4 here's some things we can do better, we'll improve next time;
5 correct?

6 A You would hope.

7 Q Okay. You wouldn't expect perfection the first time
8 around when they have an application process?

9 A Perfection is always an elusive thing.

10 MR. KOCH: All right. Thank you. No further
11 questions.

12 THE COURT: Anyone ones, defendants, defendants in
13 intervention?

14 MR. SHEVORSKI: Just real quick, Your Honor.

15 THE COURT: Mr. Shevorski.

16 DIRECT EXAMINATION

17 BY MR. SHEVORSKI:

18 Q Good afternoon.

19 A Good afternoon.

20 Q Quick question with respect to -- Mr. Koch's asked
21 you a few questions about retail investors and it's possible
22 for a retail investor to hold a share of the holding company
23 for one day, couple hours?

24 A Presumably so.

25 Q And you're aware that it's possible for not even a

1 human being to purchase a share; right? It could be through
2 an algorithm in the computer?

3 A I'm not aware of that.

4 Q Okay. With that, shares purchased and sold within
5 the same day and it's a small proportion, say two shares of
6 your company, during that time period has the ownership of
7 that share any threat to public health and safety in Nevada?

8 A No. That 60-cent investment is probably
9 inconsequential.

10 Q It doesn't matter who the owner is?

11 A I can't see how they would benefit from owning two
12 shares of stock.

13 Q My question was does it matter who the owner is of
14 that 60-cent investment during the time period to the public
15 health and safety of Nevada.

16 A I don't see how it would impact the public health
17 and safety of Nevada.

18 MR. SHEVORSKI: Thank you. No further questions.

19 THE COURT: Anyone else?

20 MR. GRAF: Real quick, Your Honor.

21 THE COURT: Mr. Graf.

22 DIRECT EXAMINATION

23 BY MR. GRAF:

24 Q Good afternoon, Mr. Sillitoe. My name is Rusty
25 Graf, and I represent Clear River in this action. I just want

1 to make sure I was clear and the Court was clear on something.
2 You applied for seven -- or you submitted seven applications?

3 A Correct.

4 Q Seven applications, different jurisdictions?

5 A Yes.

6 Q Okay. And in those -- or with those applications
7 were you ever given any guarantees that you were going to get
8 a license on any of those?

9 A No.

10 Q Okay. Were you ever told by anybody at the State
11 that there was a certainty that you would get a license if you
12 submitted an application?

13 A No.

14 Q Okay. You sold -- or your company sold within the
15 last year, I think you said.

16 A A little over a year ago.

17 Q Okay. And there was a price?

18 A Yes.

19 Q And that was a known price?

20 A Yes. Publicly available.

21 Q I'm sorry?

22 A It's publicly available information.

23 Q So what did it sell for?

24 A \$18,250,000. But that was all three of our
25 companies, not just the dispensary.

1 Q Okay.

2 A And I think it was a low price.

3 Q All right. And you think it could have been more?

4 A Absolutely.

5 Q And you're aware and you stay up on the sales of
6 other dispensaries, production, and cultivation facilities in
7 Nevada --

8 A Somewhat.

9 Q -- right?

10 A Somewhat. But not -- I don't follow it religiously,
11 but I am aware of some.

12 Q Okay. And they're selling for prices that you're
13 aware of; right?

14 A Yes.

15 Q And those prices are known in the public and in the
16 industry?

17 A Yes.

18 Q Okay. You said that your -- and this is my last
19 area I'm going to ask you about. You said that your problem
20 with this process is that it wasn't fair. Do you remember
21 that?

22 A Did I say fair?

23 Q I thought so.

24 A Okay. Sure.

25 Q I wrote it down.

1 A That sounds good.

2 Q Is your problem with the score that you received, or
3 the score that other applicants received?

4 A My problem is that I don't believe the scores were
5 all given out in the same manner. They weren't graded in the
6 same way, and there was probably too much subjectivity that
7 occurred with the scorers.

8 Q Okay. So your problem is with the scores that were
9 received by the other applicants that were successful?

10 A I can't speak to whether or not theirs were graded
11 fairly, but the process itself wasn't conducted in a fair
12 manner, and it's likely that many of the scores were graded in
13 an unfair way.

14 Q Okay. So --

15 A Without consistency.

16 Q And maybe I talked you into it, but I'm trying to
17 figure out what you mean by an in an unfair way. What was --

18 A Kind of the same things I said before, where there
19 was a lack of clarity on how the different scoring was given
20 out for each category and the people that were doing it, that
21 were giving out the scores, they weren't trained properly in
22 order to score effectively and correctly. So it's hard to
23 argue that they were experts that were knowledgeable enough to
24 give objective scores out. And so it just wasn't done in a
25 transparent and fair way.

1 MR. GRAF: Thank you.

2 THE COURT: Anyone else?

3 MS. SHELL: Your Honor, I --

4 THE COURT: Ms. Shell.

5 MS. SHELL: I just have a quick question for Mr.
6 Sillitoe.

7 THE COURT: No. You never ask questions. So we are
8 going to make sure that we listen.

9 MS. SHELL: That's not entirely true, Your Honor.
10 I have asked questions before when forced to.

11 THE COURT: It is rare for you to ask questions.

12 MS. SHELL: You know, my co-counsel at table here do
13 such an adequate job of thoroughly --

14 DIRECT EXAMINATION

15 BY MR. SHELL:

16 Q So, Mr. Sillitoe, my name's Alina Shell. I represent
17 GreenMart of Nevada an LLP in this matter. I just had a quick
18 question for you in response to some answers you gave to Mr.
19 Graf. Now, you said that it was not likely that the scoring
20 was conducted in a fair manner. What do you base that on?

21 A The outcome.

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

23 THE COURT: Anybody else? Anyone else?

24 Thank you, sir. We appreciate your time. Have a
25 very nice afternoon.

1 Your next witness.

2 MR. GUTIERREZ: Thank you, Your Honor. I would call
3 Sean Luse.

4 SEAN LUSE, DEFENDANTS' WITNESS, SWORN

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

7 THE WITNESS: Sure. My name is Sean Luse, S-E-A-N
8 L-U-S-E.

9 THE COURT: Sir, there's water there if it's still
10 in the pitcher, there are M&Ms in dispenser, and tons of
11 exhibits. So if you need a break, you let us know.

12 Mr. Gutierrez, you're up.

13 DIRECT EXAMINATION

14 BY MR. GUTIERREZ:

15 Q Good afternoon, Mr. Luse. What's your current
16 position?

17 A I am an owner of Nuleaf and also serve as the chief
18 operating officer.

19 Q And how long have you been with Nuleaf?

20 A Since the founding. So we founded the company in
21 early 2014.

22 Q When you say we who are you discussing?

23 A Well, my various co-founders.

24 Q Who were they?

25 A Specifically Tim Schick and Dan Bontan, so longtime

1 business partners of mine from California. And then local
2 people, Kenny Kuykendall, Ben Sabouri, Jeff and Paulette
3 Copoff, John Sandy III.

4 Q And how many dispensaries does Nuleaf currently
5 operate?

6 A We operate two. We also have a City of Las Vegas
7 license that's currently unoperable -- nonoperating.

8 Q Where are those two dispensaries?

9 A There's one in Incline Village. It's on the
10 Boulevard, and then one here in Clark County, unincorporated
11 Clark County, Twain and Paradise.

12 Q Okay. And were you part of the 2014 application
13 process?

14 A I was, yes.

15 Q And did you fill out the applications personally, or
16 who did that for your company?

17 A Oh. I was involved in the coordination of them.
18 You know, we had a team involved, as well as legal
19 representation. So it was a team effort.

20 Q And was Mr. Kuykendall a part of that, as well?

21 A Not in a big role, no. I mean, he was certainly at
22 that point a founder of the company and a board member, but
23 wasn't that involved in the application process.

24 Q Was he part of the 2018 process?

25 A Same thing. Still a part of the company, so

1 involved in a tangential way through board meetings and things
2 like that, but not involved intimately in the process.

3 Q And how many medical marijuana licenses did Nuleaf
4 obtain?

5 A So we were granted five initially in 2018, two
6 cultivation and three dispensary -- or 2014.

7 Q And was Nuleaf part of the State and County
8 lawsuits?

9 A That's correct.

10 Q What side was Nuleaf on?

11 A So we would have been the State [unintelligible].

12 Q So you were granted licenses by the State; is that
13 fair to say, or at that point, 2014, or is it opposite?

14 A Well, I guess -- when you say which side were we on,
15 I would say were the State [unintelligible], because we
16 initially had our special use permit denied by the County, but
17 then we ranked highly when the State rankings came out, and
18 then the resolution came during the legislative session.

19 Q And how did that whole State and County lawsuit
20 affect the development of the 2018 process?

21 A For us personally, or are you asking me more
22 broadly, like the whole process or --

23 Q More broadly for the industry. That lawsuit
24 presented some type of -- there was a -- they knew there was
25 an inconsistency with how local governments were approving

1 with the State; correct?

2 A Uh-huh.

3 Q Is that a yes?

4 A That's generally at the heart of it, yes.

5 Q But how did the industry sort of lobby or discuss
6 that with the Department in how to improve the 2018 process?

7 A You know, it's hard for me to speak on all the broad
8 swath of lobbying. I mean, I think, you know, there was court
9 cases around that, too, a case in the City of Las Vegas that
10 we were involved with that ended up at the Supreme Court. So,
11 you know, I think it probably influenced people's thinking on
12 the process some and -- about locations and who really gets to
13 decide those and things.

14 Q And that case, that was a published Supreme Court
15 decision; right? Is that correct?

16 A Uh-huh. Yeah.

17 Q Yes?

18 A Yes.

19 Q That involved you said your City of Las Vegas
20 license?

21 A Yeah, it did.

22 Q Tell me a little bit about that case.

23 A Yeah. Sure. So in 2014 the State ranked us as
24 Number 2 in the City of Las Vegas jurisdiction, but just a
25 couple weeks before that we had our special use permit denied.

1 And then -- so as we were moving forward it was our
2 understanding that we would go for a new location, you know,
3 we had a counsel member on record during the hearing saying
4 that, hey, we like these operators, we just don't like that
5 location. So our understanding was we'd just get a new
6 location and apply for another special use permit, since we
7 were ranked so highly by the State and had that provisional
8 license. Other participants felt otherwise, and they filed
9 suit with an attempt at having our provisional license
10 reassigned to another group, to the thirteenth group in the
11 City, since the top 12 received provisionals.

12 Q Who was that other group?

13 A It was originally GB Sciences, is my recollection.
14 And then at the last minute, though, there was a scoring
15 change and the group that became Acres came from way down the
16 list at 40-something and became the new 13, the new thirteenth
17 ranked applicant. And then when the District judge sided with
18 them, they -- 13 got the license, Number 2, Nuleaf, did not.
19 And then we appealed to the Supreme Court, the Supreme Court
20 reversed that decision back to us.

21 Q Supreme Court reversed that decision in your favor;
22 correct?

23 A Yeah. And now we have the City of Las Vegas
24 license.

25 Q And you just haven't got the special use permit to

1 get that operational?

2 A We have that. We just haven't completed build-out
3 and actually opened to doors, but we do have the special use
4 permit.

5 Q Okay. Now, as part of the 2018 process how much
6 time did Nuleaf spend on that application?

7 A Oh, a significant amount of time. We had multiple
8 people from Sandy Law working, working on the application for
9 months. We had multiple staff members involved. We were
10 actively engaged in real estate pursuits, trying to tie up
11 properties and get that. So there's a lot. I don't have a
12 firm number on it, but significant.

13 Q Did -- and Nuleaf did very well on the medical
14 application, correct, on their scores?

15 A Yeah, I'd say so.

16 Q And Kenny Kuykendall, it's -- did he have -- I know
17 we asked this, but what was his role with the application
18 process?

19 A I'd say in preparing the application virtually no
20 role other than filling out his attestation and, you know, the
21 required things as a minority owner and a board member. But
22 in terms of writing applications or things like that --

23 Q Were there portions of the application for Nuleaf
24 that you just did a find and replace for medical?

25 A I don't think that was our approach, no. I mean,

1 certainly we did a number of -- you know, we did edit
2 documents, we did create new documents. You know, regulations
3 changed, our operation's evolved. But I don't think it was a
4 simple find and replace, no.

5 Q But some portions you would agree that were you just
6 a find and replace?

7 A No. That's not my recollection of a process.

8 Q If Mr. Kuykendall told that to Mr. Burton, my
9 client, that would be false, that Nuleaf just did a find and
10 replace and that was one of the reasons he believed they lost?

11 A Yeah. I don't believe that's true, no.

12 Q Okay. With that application how did Nuleaf do in
13 the scoring round for the 2018?

14 A How did we do? We applied for five licenses, five
15 jurisdictions, and we received zero.

16 Q And what jurisdictions were they?

17 A It was unincorporated Clark County, City of Las
18 Vegas, North Las Vegas, Reno, and Sparks.

19 Q Okay. Now -- and you authorized this lawsuit to be
20 brought; correct?

21 A Correct.

22 Q And what was the basis for you bringing this
23 lawsuit?

24 A A feeling that the process was -- initially when we
25 started we were concerned about the opaque nature of it. We

1 really didn't know what happened. When we started to piece
2 together information we saw that it appeared that a large
3 number of licenses had accumulated in the hands of very few
4 groups and didn't -- didn't make sense to us, and we didn't
5 know what really happened, and we felt the only way to
6 preserve our rights and find out was to file the lawsuit.

7 Q And since the filing of the lawsuit SB 32 gave a lot
8 of transparency on the scoring process. Do you agree?

9 A I do agree.

10 Q And is transparency still an issue for your company
11 with this litigation?

12 A I don't believe -- transparency is not a huge issue
13 for us at this point. I do think there's been a lot, both
14 through these hearings and through that piece of legislation
15 that has come out. But the more we've learned in here I think
16 the more we've realized that our suspicions maybe were true
17 and that there was a lot inconsistent things which seemed to
18 be sloppiness, poor training, you know, a number of things
19 that have come to light now that we've shown the light on it.

20 Q Sloppiness and poor training. But one of the
21 initial allegations that came out of this was some type of
22 favoritism or corruption. You no longer believe that;
23 correct?

24 A I haven't seen any evidence of, you know, bribery or
25 corruption. I do think that what it sounds like is some

1 people had more access and maybe even personal relationships
2 with important people in the Department of Taxation that may
3 have -- may have been part of this.

4 Q You believe this was a scoring process using
5 impartial graders, though; correct?

6 MR. CRISTALLI: Objection. Calls for speculation.

7 THE COURT: Overruled. You can answer.

8 THE WITNESS: You know, I have no evidence that
9 they're not impartial, but I don't know a lot about --
10 BY MR. GUTIERREZ:

11 Q Well, let me ask it this way. The graders that were
12 used for this were independent contractors; correct?

13 A That's my understanding, yes.

14 Q They weren't part of the Department of Taxation;
15 correct?

16 A Correct.

17 Q They didn't have any knowledge as to how the
18 different companies were; is it fair to say?

19 A I would imagine that's fair.

20 Q Okay. So do you believe using an independent
21 contractor, as opposed to like a compliance officer, gives
22 that grading process more of an impartial feel?

23 A It could be more impartial, yes. But I think it may
24 also make it less informed and less likely to make the proper
25 determinations.

1 Q And do you think the scoring process is similar to
2 2014 in 2018?

3 A The scoring process, like how the actual
4 applications were judged and --

5 Q Yes.

6 A I think on paper it looks somewhat similar. But I
7 think in practice I don't believe it was similar.

8 Q Do you -- are you making any claim that NRS 453D,
9 the actual statute that adopted the ballot issue, that that is
10 flawed? Are you making that claim?

11 MR. CRISTALLI: Objection. Attorney-client.

12 THE COURT: Overruled. You can answer.

13 THE WITNESS: That Question 2 was --

14 BY MR. GUTIERREZ:

15 Q Let me ask you this way. Question 2, the ballot
16 initiative, was put into a statute, NRS 453D; correct?

17 A Correct.

18 Q Are you making the claim that NRS 453D isn't
19 consistent with the ballot initiative?

20 A Am I making that claim? I think it's likely that
21 there are some inconsistencies, yes.

22 Q Okay. Let's go through that. Let's pull up 453D
23 and ask specifically what those -- and I'm talking about
24 inconsistency with the ballot initiative and that statute. I
25 want you to explain for us -- if the book is front of you, you

1 can turn to 453D. Right to your left, sir.

2 THE COURT: It's right here, this blue book. And in
3 the paper part on the back. It's called a pocket part for
4 lawyers.

5 BY MR. GUTIERREZ:

6 Q We could pull up the ballot initiative, too, if you
7 need it. But my question's very specific as to this statute
8 in following the ballot question, are you claiming that this
9 statute is inconsistent in any way the ballot initiative?

10 MR. CRISTALLI: Objection. Calls for a legal
11 conclusion.

12 THE COURT: Overruled.

13 THE WITNESS: Yeah. I mean, I'm not going to be
14 able to read the whole thing and cross-reference it while
15 we're here. So --

16 BY MR. GUTIERREZ:

17 Q We've been talking about regulations under NAB 453D.
18 Are you aware of that?

19 A Yes, I'm aware of its existence, uh-huh.

20 Q Okay. And is your claim that the regulations don't
21 follow this statute, or is it that the statute doesn't follow
22 the ballot initiative? Just trying to be clear on this.

23 A Right. Yeah. So I'm -- I'm -- believe it's my
24 thinking is the regulations not following --

25 Q Okay. And you've been in court; right?

1 A I have. Not nearly as much as maybe some people,
2 but I've been here a few days.

3 Q Not as much as Mr. Hawkins, though. So we've been
4 talking about the regulations following the statute. But, to
5 be clear, you're not saying that the statute is not -- is
6 inconsistent with the ballot initiative?

7 A Yes, I suppose I am talking about the regulations be
8 inconsistent with the statute.

9 Q We've talked about background checks and you've been
10 here on background checks; correct?

11 A Yep.

12 Q And we've talked about diversity; correct?

13 A Uh-huh.

14 Q We also talked about the whole proposed location;
15 correct?

16 A Right.

17 Q Now, with diversity are you -- is it your position
18 that diversity's not directly or demonstrably related to the
19 operation of a marijuana establishment?

20 A Yeah. That is --

21 Q And explain why you believe that.

22 A Because I believe that absolutely no evidence or
23 studies or anything that would indicate that somebody's
24 State's Exhibit or ethnic background is an indicator or
25 predictor of how well they can operate a dispensary.

1 Q With respect to background checks and the 5 percent
2 requirement, was the 5 percent requirement in place when you
3 did the 2014 and '15 applications?

4 A I believe it was. We are a private company
5 ourselves, so it's not a focus of ours.

6 Q You said you believe it was?

7 A Yes.

8 Q Okay. You had no objection then, to the 5 percent
9 requirement?

10 A Not a formal objection.

11 Q Okay. But now you have an objection because you
12 didn't get a license, is that fair to say, because of this
13 5 percent requirement?

14 MR. CRISTALLI: Objection. Argumentative.

15 THE COURT: Overruled.

16 THE WITNESS: Yeah. I wouldn't say that, no. I
17 think that between the 2014 and 2018 a lot has changed and
18 we're seeing there's a lot more public companies, there's a
19 lot different ones, they're based in other countries. It's
20 just a -- it's whole 'nother world than there in just five
21 years, in my opinion.

22 BY MR. GUTIERREZ:

23 Q But you had the opportunity to object to any of the
24 regulations during the process when they were holding public
25 workshops or talking with the industry leaders; correct?

1 A Yeah.

2 Q And you didn't raise any issue with the 5 percent
3 requirement when they were adopting the regulations for 2018;
4 correct?

5 A No, I did not.

6 Q Okay. We've talked about irreparable harm and the
7 harm that could be incurred if there's an injunction that's
8 not granted. Can you express that -- explain that to me what
9 the harm would be to your company, Nuleaf, if an injunction is
10 not granted?

11 A Yeah. I would say that -- back to the point of
12 background checks, you know, I believe we've heard now and
13 know that many owners of companies weren't background checked,
14 weren't fully vetted. And so I worry that there could be a
15 broad backlash by the federal government that may disrupt our
16 whole program here and pull the rug out from under us and
17 perhaps everybody would lose our licenses, lose the tax money.
18 And so I think that's one potential harm that could come.

19 Q Okay. Anything else?

20 A Obviously there's the potential for financial harm
21 to our business or loss of market share, loss of revenue,
22 things like that?

23 Q Anything else?

24 A I would say the other harm is just the nature of the
25 concentration of licenses that this new round would create,

1 that there could be an oligopoly of a few operators who
2 control, you know, double digit licenses, and I think that has
3 the potential to pervert the whole market, potentially drive
4 down tax revenue, and create a competitive imbalance that
5 harms other businesses.

6 Q You're aware that the regulations for NRS 453D allow
7 that in the judgment of the Department they can do a
8 background check on a less than 5 percent owner?

9 A I am aware of that, yes.

10 Q So hypothetically, if the Department did background
11 checks on public companies tomorrow, would that satisfy your
12 concern and allow these licensees, these 61 licenses to go and
13 get opened?

14 A Not every single concern, no.

15 Q Well, then we have -- what other concern would we
16 still have?

17 A Well, there would be the concern of the entire
18 process and what we might learn farther down the line in this
19 case, and there's the comments I still made about what a
20 virtual oligopoly could create here in the market forces at
21 play, things like that. Certainly there's more. That was
22 just the main one that came to mind first.

23 Q And there is an anti-monopoly [unintelligible] in
24 the regulations; correct?

25 A That's correct.

1 Q And that 10 percent of a certain number of licenses
2 based on population; is that correct?

3 A Yeah.

4 Q And would you agree that if a company complies with
5 that regulation that they're in compliance with the anti-
6 monopoly provisions of the regulations?

7 A Yes.

8 Q Okay. We've talked a little bit about tax revenue
9 being lost. Do you think that tax revenue is actively being
10 lost with these new licenses not being able to open?

11 A I don't know, but I highly doubt it.

12 Q And you say you highly doubt it. Why do you say
13 that?

14 A Because I do believe that there -- we -- that the
15 needs of cannabis consumers are largely being met in Nevada, I
16 think like you heard from a previous witness. I don't believe
17 that there's all these people who are just waiting for another
18 dispensary to open downtown and then they'll start buying
19 cannabis. I think we've largely captured the market and that
20 there's not going to be all this new tax revenue coming.

21 Q What about in some of the counties that haven't had
22 dispensaries that will have a new dispensary?

23 A That's -- that could be different. I don't think
24 there's many of those counties that have more than ten, 20,000
25 people in them, but it could be a small amount of tax revenue.

1 Q And that could be additional tax revenue for the
2 State if they're allowed to open; correct?

3 A It could be, yes.

4 MR. GUTIERREZ: All right. I'll pass the witness,
5 Your Honor. Thank you.

6 THE COURT: Any other defendant, defendant in
7 intervention have questions?

8 MR. SHEVORSKI: Quick, Your Honor.

9 DIRECT EXAMINATION

10 BY MR. SHEVORSKI:

11 Q Good afternoon, Mr. Luse. Steve Shevorski of the
12 Attorney General's Office.

13 My friend Mr. Gutierrez was asking a few questions.
14 You mentioned locking up properties. You would agree with me
15 at the time you submitted your application you did not
16 indicate on your application that you had actual physical
17 addresses, correct, for any of the licenses you were applying
18 for?

19 A That is correct.

20 MR. SHEVORSKI: No further questions.

21 THE COURT: Any other defendant, defendant in
22 intervention have questions?

23 Anyone from the plaintiffs' side?

24 Mr. Graf, nothing from you?

25 MR. GRAF: No, no, no. [Inaudible].

1 THE COURT: All right. Thank you, sir. We
2 appreciate your time. Have a nice afternoon.

3 Next witness.

4 MR. GUTIERREZ: I think that's all of our witnesses
5 for today. We have a few witnesses. We have a few witnesses
6 with Mr. Bult's clients that will be available at the next
7 hearing.

8 THE COURT: And our next hearing for you guys is?

9 MR. KOCH: Thursday morning?

10 MR. GUTIERREZ: Thursday morning.

11 THE COURT: So we're starting Thursday morning at
12 9:30.

13 MR. GUTIERREZ: That works for me.

14 MR. GENTILE: Your Honor, what is the schedule for
15 Thursday? Are we going all day?

16 MR. PARKER: No. We can't. I've got a board
17 meeting.

18 THE COURT: Teddy has to go to a board meeting.
19 Still the Housing Authority board, Mr. Parker?

20 MR. PARKER: It is, Your Honor.

21 THE COURT: He goes to the Housing Authority board
22 apparently every time I schedule a hearing.

23 MR. PARKER: [Inaudible].

24 THE COURT: So the question is how quick are these
25 two witnesses going to be? About the same?

1 MR. GUTIERREZ: About the same, Your Honor.

2 THE COURT: Forty minutes each?

3 MR. GENTILE: Here's my problem. You were going to
4 ask by the end of the day today if we were going to call a
5 rebuttal witness. We are.

6 THE COURT: No, I'm not going to ask you that till
7 Thursday.

8 MR. GENTILE: Oh. Thursday you're going to ask.

9 THE COURT: I told you I was going to ask you when
10 those witnesses finish.

11 However, before I let you guys go for the day, since
12 I have minutes of your time still, I have a pending motion to
13 seal that was on my calendar on Friday that I was hoping I
14 would get some redacted versions of proposed exhibits from
15 some of you. Mr. Koch is prepared to discuss that issue with
16 me.

17 Do you have a proposed redaction for me, Mr. Koch?

18 MR. KOCH: The items -- the ones that we believe
19 should be sealed from Nevada Organic Remedies gave four sets
20 of Bates numbers.

21 THE COURT: Nope. Give me the actual documents with
22 the proposed redactions on them.

23 MR. KOCH: Okay. I can do that. I don't have it
24 today, but I'll --

25 THE COURT: Okay. Can you do that on Thursday?

1 MR. KOCH: We can do that.

2 THE COURT: So, Dulce, continue it to Thursday at
3 9:30.

4 MR. KOCH: And with respect to planning my
5 understanding and hope is that Thursday there's a possibility
6 of finishing witnesses. I don't know if that hope is
7 justified or not, but there's some talk about potentially
8 trying to find a day next week for closing arguments, maybe
9 schedule it now. I know we said Wednesday is a possibility.
10 I don't know if what the Court's schedule looks like.

11 MR. KEMP: Judge, I don't think that's a possibility
12 because of this rebuttal witness.

13 THE COURT: When is the -- if you call a rebuttal
14 witness -- hypothetically if you call a rebuttal witness, when
15 might they be available?

16 MR. GENTILE: He will fly in here on the 28th and
17 testify the 29th.

18 THE COURT: So are you assuming I have nothing to do
19 on the 29th?

20 MR. GENTILE: I did not. He's available on the
21 30th, as well.

22 THE COURT: You know, 'cause I have stuff the 29th,
23 30th, and 31st.

24 MR. GENTILE: I could bring him later than that. I
25 was trying to get him in as soon as he's available, and that's

1 as soon as he's available.

2 THE COURT: Can he testify by video?

3 MR. GENTILE: I don't think so. He's got
4 commitments in Colorado and in Chicago.

5 THE COURT: Hold on. Let me look at my days for the
6 29th and 30th. Because I just erased Mr. Koch's partner's
7 case on August 1 and August 2. I was able to erase those this
8 morning.

9 MR. KOCH: What case is it?

10 THE COURT: I don't know. Some preliminary
11 injunction hearing with doctors.

12 MR. GRAF: Do you know who this witness is and what
13 he's going to testify to?

14 THE COURT: Hold on. Hold on, Mr. Graf.

15 MR. GRAF: I'm crazy.

16 THE COURT: So I have one of the lovely HOA cases,
17 foreclosure cases on the 29th, and on the 30th and 1st I have
18 another lovely HOA foreclosure case.

19 MR. KOCH: I think you might have a horse case after
20 that.

21 THE COURT: No. The horse case settled. I was
22 looking forward to that one.

23 (Pause in the proceedings)

24 THE COURT: So, Mr. Gentile, those cases never
25 settle. Never, because they all want to go to the Supreme

1 Court and ask the Supreme Court what the next item they're
2 going to clarify is. And the Supreme Court keeps clarifying
3 things, which reinforces their not settling and going up
4 there.

5 I do, however, have free the 1st and 2nd. I have
6 other time free before. But if your witness isn't free, then
7 I'm not getting done this week, which was my hope.

8 MR. GENTILE: Witness told me he could be here the
9 29th or 30th. I never discussed anything after that, because
10 I said, how soon can you get here. But I'm pretty confident
11 that the 1st would probably work.

12 THE COURT: So assume for me for a minute that at
13 the end of these two witnesses on Thursday you think you need
14 to use a rebuttal witness. What subject matter do you think
15 he would be testifying on?

16 MR. GENTILE: They have raised the issue of
17 irreparable harm and the valuation of a license. That's what
18 he testifies about.

19 MR. GRAF: Your Honor, that's not raised. That's an
20 element of a preliminary injunction. I cannot believe that's
21 rebuttal.

22 THE COURT: Well, but --

23 MR. GRAF: I object. I do not think that that is a
24 witness --

25 THE COURT: It could be rebuttal under -- based on

1 the evidence you guys have presented, because I had already
2 written down my thoughts a couple of days ago on irreparable
3 harm, and I've certainly modified them since today given some
4 of the things you guys have said.

5 MR. GENTILE: That's my point. That's why I want to
6 call him.

7 THE COURT: I don't know if -- I had to ask how to
8 spell it, 'cause I was having trouble today. So you couldn't
9 find any irreparable harm, then; is that your --

10 THE COURT: Not the way I was spelling it. That was
11 good, Mr. Koch. I don't know who came up with that, but --

12 (Off-record colloquy)

13 THE COURT: So I'm not saying he can't call him as a
14 rebuttal witness, but I'm not going to ask him that question
15 till you guys finish the case. I am concerned about the
16 scheduling.

17 Assume with me for a minute that Mr. Gentile's able
18 to get the person he wants to call as a rebuttal witness here
19 on August 1st. Would you all be able to argue on August 1st
20 and 2nd?

21 MR. SHEVORSKI: State's fine with that, Your Honor.

22 MR. GENTILE: I'm sure we would. Don't you?

23 MR. KAHN: Your Honor, I'm in -- out of state until
24 the 5th. From the 25th to the 5th.

25 THE COURT: Okay. So we won't be going on August 1

1 and 2, then.

2 MR. GENTILE: Not go at all?

3 THE COURT: Not if I have people who are out of
4 state. I mean, I'm trying real hard to have every --

5 MR. GENTILE: I get it.

6 MR. KAHN: If he's not going to call the rebuttal,
7 we're all here next week for the motion for summary judgment
8 hearing. Would that work?

9 THE COURT: I'm calling a rebuttal witness, so, you
10 know, if we could get back to if a frog had wings, but I'm not
11 going there anymore.

12 THE COURT: I'm not trying to get anybody to go
13 anywhere.

14 MR. GENTILE: Okay.

15 THE COURT: If you're not back till the 5th, then I
16 won't know what I have until July 30th when I do the calendar
17 calls for the next group of cases. And it's a mess, because
18 Steve Peek wants four days on a probate motion to invoke
19 settlement -- oh, I'm sorry, a motion to approve settlement.

20 MR. GENTILE: I will inquire of my -- Your Honor,
21 I'll be able to report to you on Thursday his availability in
22 August.

23 THE COURT: All right. I will see you guys Thursday
24 morning.

25 MR. GRAF: Oh. Wait.

1 THE COURT: Yes, Mr. Graf?

2 MR. GRAF: Can we get a name?

3 MR. GENTILE: Larry.

4 THE COURT: I do not typically require disclosure of
5 true rebuttal experts, especially not in a preliminary
6 injunction hearing.

7 Anything else? Jill's off.

8 (Court recessed at 4:26 p.m., until the following
9 Thursday, July 19, 2019, at 9:30 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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DEFENDANTS' WITNESSES

Brett Scolari	3/30	33	41	-
Frank Hawkins	44/68/73/97	102	-	-
Ben Sillitoe	107/122/147/			
	148/152	-	-	-
Sean Luse	53/169	-	-	-

* * *

EXHIBITS

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

264	36
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DEFENDANTS' EXHIBIT NO.

2023	42
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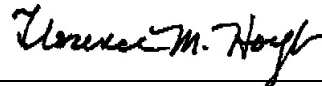
CERTIFICATION

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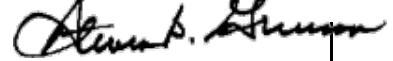
**FLORENCE HOYT
Las Vegas, Nevada 89146**



FLORENCE M. HOYT, TRANSCRIBER

7/16/19

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

EVIDENTIARY HEARING - DAY 16

THURSDAY, JULY 18, 2019

COURT RECORDER:

JILL HAWKINS
District Court

TRANSCRIPTION BY:

FLORENCE HOYT
Las Vegas, Nevada 89146

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

APPEARANCES:

FOR THE PLAINTIFFS:

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

FOR THE DEFENDANTS:

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

1 LAS VEGAS, NEVADA, THURSDAY, JULY 16, 2019, 9:29 A.M.

2 (Court was called to order)

3 THE COURT: All right. Good morning, Serenity
4 Wellness and others. How are you all today?

5 MR. SHEVORSKI: Good, Your Honor. Good morning.

6 THE COURT: I understand from some scheduling
7 discussions I had before we started that I've got three
8 witnesses today, Bradley, Rombough, and Zakalik. Who am I
9 starting with?

10 MR. GUTIERREZ: Your Honor, we're starting with
11 Judah Zakalik.

12 THE COURT: Okay. Mr. Zakalik, if you'd come
13 forward, please.

14 MR. CRISTALLI: Your Honor, he may need his
15 attorneys.

16 THE COURT: I think they're coming back. They're
17 coming.

18 JUDAH ZAKALIK, DEFENDANTS' WITNESS, SWORN

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

21 THE WITNESS: Judah Zakalik, J-U-D-A-H
22 Z-A-K-A-L-I-K.

23 THE COURT: And while we're waiting for Mr. Fetaz
24 and Mr. Bult to come back in, I'm going to tell you a couple
25 preliminary things. You notice there is a pitcher of water

1 there next to you. So if you need water, it's there for you.
2 There are also dispensers with M&Ms behind if you need M&Ms to
3 keep you going as they ask you questions, let me know. And
4 then there are also binders with a lot of exhibits. They may
5 have you look at the hard copies. They are also going to show
6 them to you on the screen. You are always welcome to look at
7 the hard copy if it's easier for you. And if they refer you
8 to the statute, I do have the version that's in the statute
9 book I can hand you to assist you.

10 THE WITNESS: Thank you, Your Honor.

11 THE COURT: Okay?

12 THE WITNESS: Yes, Your Honor.

13 THE COURT: And since your counsel's now in the room
14 and I've finished the preliminaries, I'm going to let the
15 examination begin. That was called stalling.

16 DIRECT EXAMINATION

17 BY MR. GUTIERREZ:

18 Q My name's Joe Gutierrez. I'm one of the attorneys
19 for Essence and Thrive. Tell us what your current position is
20 with Zion Gardens.

21 A Managing member.

22 Q And how long -- tell us when you started Zion
23 Gardens.

24 A 2014, I believe.

25 Q And who did you start with?

1 A Aaron McCrary.

2 Q And is Aaron McCrary an owner, as well?

3 A Yes, he is. He's a managing member, also.

4 Q Managing member. Okay. And is Zion Gardens a
5 cultivation and production company?

6 A No.

7 Q Can you explain what the company is.

8 A Cultivation, medical and recreational.

9 Q So the company's never held a dispensary license; is
10 that correct?

11 A No, sir.

12 Q And it doesn't have a production license?

13 A No, sir.

14 Q Okay. And I understand you're a licensed attorney
15 in the state of Nevada; is that correct?

16 A That is correct.

17 Q When did you pass the bar?

18 A '07, I believe. Yeah, I think '07. It's over 10,
19 12 years ago.

20 Q Can you explain for us how Zion Gardens got started.

21 A We formed a LLC with the State of Nevada.

22 Q And how did you and Aaron get together and decide to
23 form the company?

24 A I've known Aaron since he was -- since we both
25 attended University of Washington. So we're college friends.

1 Q And did he approach you about starting the company,
2 or how did that happen?

3 A I don't recall.

4 Q Do you have an active role with the management of
5 the company, or are you just part owner?

6 A No, I'm active.

7 Q Okay. Did you help complete any of the applications
8 for the 2014 process?

9 A Yes.

10 Q And who completed the applications for the 2018
11 process?

12 A It was a joint effort.

13 Q By who?

14 A By myself, by Aaron, by our attorney, by -- some of
15 my staff also helped.

16 Q And I was reading an article about Aaron McCrary.
17 He's the first African-American owner of a cultivation company
18 in Nevada; is that correct?

19 A Owner operator. That's what he's been reported as,
20 yeah.

21 Q And I think Zion Gardens reported that it's a top
22 priority for diversity, to have diversity within this company;
23 is that fair to say?

24 A Yes, it is.

25 Q Okay. Can you tell us why you believe diversity's

1 important for the operation of a marijuana establishment.

2 A Yes. Yes. I believe that people of color, black
3 and brown, have been targeted by marijuana laws prior to
4 legalization. I think there's been a lack of fairness in the
5 imprisonment of people of color, and I think that -- I've seen
6 and I continue to see people of color excluded from the legal
7 marijuana industry, either because lack of finances, maybe
8 criminal backgrounds. And so I think we see a gentrification
9 of a burgeoning multibillion-dollar industry, and that bothers
10 me.

11 Q So in the 2018 application process were you in
12 support of diversity being considered as a factor for the 2018
13 criteria?

14 A I think it's an important factor, yes.

15 Q Okay. And for the reasons we just discussed; is
16 that fair to say?

17 A For some of those reasons, yes.

18 Q Is there more reasons that we haven't discussed that
19 you believe it is an important factor?

20 A Just that I believe that -- I believe in equal
21 opportunity, I believe that -- I believe that people should be
22 given the opportunity to have a fair say in how they -- just
23 opportunity to make money in this industry. Essentially
24 that's it. And I believe that black and brown people have
25 been unfairly targeted in the past.

1 Q And can you explain for us how you believe a diverse
2 group of owners or operators is important for your operations.

3 A I think diversity is in important in any aspect of
4 any business. I think diversity is important in the law. I
5 think diversity is important in any industry. People from
6 diverse backgrounds are often very valuable in businesses,
7 because they bring different perspective. I think that --
8 it's for those reasons.

9 Q Where is your cultivation facility located?

10 A It's 3441 Precision Drive, North Las Vegas.

11 Q And how large is your facility?

12 A 6,000 square feet.

13 Q Okay. So in 2018 at some point you decided you
14 wanted to expand from cultivation into a dispensary; is that
15 correct?

16 A I think we wanted a dispensary from the outset.
17 It's just when we applied in 2014 we had to make a strategic
18 decision which was best for us, and so we decided to go down
19 that road.

20 Q Okay. And when you got your results from the 2018
21 process in December of 2018 what was your initial reaction?

22 A Disappointment.

23 Q At what point did you decide to bring a lawsuit
24 against the State of Nevada?

25 A When I had some concerns about the fairness and the

1 transparency of the overall process and when I couldn't get
2 those answers when I went to review our scores.

3 Q And with respect to transparency, is that something
4 you believe has been addressed by the passage of SB 32?

5 A Well, I'm not fully familiar with the full text of
6 SB 32. It's really hard for me to say.

7 Q Are you aware that SB 32 was passed sometime in May?

8 A I am if you say it was. I'm not sure when it was
9 passed, but I understand that SB 32 was a bill that was
10 passed.

11 Q What's your understanding as to what SB 32 was
12 related to?

13 A I don't have an understanding of what it was related
14 to.

15 Q Okay. If SB 32 was able to give more transparency
16 and that was the intent by disclosing scores and rankings, is
17 that something you've seen?

18 A I've seen scores and rankings, yes, sir.

19 Q Okay. And does that address your transparency
20 concerns?

21 A No.

22 Q What else is that that you're looking for that you
23 believe hasn't been disclosed?

24 A I'd like to know how the whole process was
25 administered. I'd like to know how the graders graded. I'd

1 like to know what criteria they would use, I'd like to know
2 how things were weighted. I'd like to know who had input in
3 that process. I'd like to know what the oversight was.

4 Q And you talked about fairness, as well, being part
5 of your reason for bringing the lawsuit; correct?

6 A Yes.

7 Q Okay. And tell us exactly what you mean by
8 fairness. What --

9 A I mean fairness that everyone has the equal
10 opportunity to get a license.

11 Q Is it your position that -- well, let me ask this.
12 Are you familiar with the regulations that govern the sale of
13 recreational marijuana?

14 A I think more familiar than some, probably less than
15 others.

16 Q And they're codified in NAC 453D. Are you familiar
17 with that statute?

18 A I am. I've read it.

19 Q Okay. And is your position today that the
20 provisions in NAC 453D don't comply with the ballot
21 initiative?

22 A Are you asking me a question?

23 Q Yes. Is it your position that the regulations in
24 NAC 453D do not comply with the ballot initiative?

25 A I can't say specifically that that's my position.

1 My position today is that I don't think the whole process was
2 fair. I think that there were some -- there's some issues in
3 how the whole licensing process was administered.

4 Q Okay. So you don't have a specific complaint as to
5 this provision in the regulations doesn't exactly match the
6 ballot initiative and NRS 453D?

7 A I leave that to my lawyers.

8 Q Your complaint was unique in that you requested
9 compensatory damage against the State of Nevada. Are you
10 aware of that?

11 A I'm sure there was.

12 Q Okay. What's your basis for the compensatory damage
13 against the State of Nevada?

14 A As a lawyer oftentimes we throw everything at the
15 wall and see what sticks. So I think it was probably just
16 that, you know, let's ask for everything and see what the
17 Court thinks is fair.

18 Q Now, we've been here for two months on an injunction
19 process. Are you familiar with an injunction process as an
20 attorney?

21 A Yes, sir, I am.

22 Q What relief are you seeking from the injunction?

23 A I'm seeking that the licensing not go forward until
24 we understand whether the process was fair. That the parties
25 that were awarded license and that the State hold off on

1 moving forward with it until we get a full view on the whole
2 process to understand that.

3 Q Are you asking the Court to award your company a
4 license?

5 A No.

6 Q Are you asking the Court to redo the process, the
7 scoring process?

8 A No.

9 Q Now, can you explain for us with this injunction
10 what you believe your harm is to Zion Gardens that would
11 warrant stopping the process of the licensees getting final
12 approval as we vet this process?

13 A Well, I think the harm is on a micro level with Zion
14 Gardens, but also on a macro level. I think if there's not
15 fairness in process, that hurts society overall. I think it
16 detracts from trust in government. The Taxation Department is
17 a department of the government, and if we can't trust that
18 they administer things fairly, I think that's an issue for
19 society overall, and I think that oftentimes one party is
20 specifically aggrieved, but that issue permeates society. So
21 that's one of the reasons why I brought this. I was raised to
22 be very -- to think of things very fairly. Whether I'm right
23 or whether I'm wrong, I always want it to be fair whether it
24 benefits me or not. So that's -- that's one of the reasons
25 why I brought this lawsuit.

1 Like I said, I think that -- going back to the
2 diversity issue, I think that people of color have been
3 unfairly targeted with drug laws in this country for decades,
4 and it's important to me that we help reverse that. And I
5 think that having a diverse company and more diverse members
6 in this -- in this industry represented helps society overall.

7 Q But with respect to Zion Gardens itself, is your
8 company going out of business if this injunction is not
9 granted?

10 A I think that the writing is on the wall that it will
11 go out of business if we cannot have the same opportunities as
12 others.

13 Q And is that an opportunity because as a cultivator
14 you believe that cultivators were not given a fair opportunity
15 during the 2018 process?

16 A I don't know. I don't know if they were or if they
17 weren't.

18 Q Okay.

19 A That's one of the reasons why I brought this
20 lawsuit, to find out.

21 Q And when you say going out of business, what do you
22 mean by going out of business if additional dispensaries open?

23 A Yeah. I believe that we've seen a concentration of
24 dispensary licenses awarded, and I believe that as we have
25 seen in other industries and perhaps even in this industry,

1 that there will be a strategic approach by those who hold the
2 majority of the licenses to stop others, to essentially put
3 them out of business.

4 Q And are you aware of the anti-monopoly provision in
5 the regulations?

6 A I can't say that I am.

7 Q Okay. If the results of the 2018 licensing process
8 complied with the regulation of anti-monopoly, would you still
9 have an objection to it?

10 A I think -- if it complied, I don't know, because I'm
11 not sure what the anti-monopoly -- specifically what those
12 provisions say.

13 Q Okay. We could turn to it now.

14 A Okay.

15 MR. GUTIERREZ: Brian, can you pull up NAC 453D.272.

16 BY MR. GUTIERREZ:

17 Q And, Mr. Zakalik, this should appear on your screen.

18 A Yes, sir.

19 Q Okay. And specifically go down to subsection (5).
20 You've seen this provision in the regulations before?

21 A Yes, I believe I have.

22 Q Okay. And if the Department -- and we could read
23 this statute. It says, "To prevent monopolistic practices the
24 Department will ensure in a county whose population is 100,000
25 or more that the Department does not issue to any person,

1 group of persons, or entity the greater of one license to
2 operate a retail marijuana store or more than 10 percent of
3 the licenses for retail marijuana stores allottable in the
4 county." Do you read that in front of you?

5 A I can read it, yes.

6 Q Yeah. If the Department has stated that the 2018
7 process has complied with this provision on anti-monopoly,
8 would you still have a reason to object as to any monopolistic
9 practices?

10 A I'm sorry. Can you ask that one more time.

11 Q Sure. If the Department has confirmed that there is
12 no company that holds more than 10 percent of the licenses in
13 any county, would you still have an objection on the anti-
14 monopolistic practices or --

15 A Yeah. I have an objection on how the Department
16 came to that conclusion. They have not been transparent on
17 how they came to that conclusion. That's my issue.

18 Q On the conclusion, or actually the enactment of this
19 regulation?

20 A My issue is more on the process and how they came to
21 that conclusion.

22 Q Understood. Okay. So your position is that it's
23 not with the actual text of this regulation, it's more the
24 results and how they came to that conclusion?

25 A I mean, look, if the State and the people passed

1 this regulation and as far as how intergovernmental policies
2 work and how we got to this I can't quite say. Whether they
3 had administered this correctly is really my concern.

4 Q Got it. So is it fair to say that and your partner
5 didn't speak at any of the public workshops or Governor's Task
6 Force meetings where these regulations were being adopted?

7 A We did not speak, no, sir.

8 Q Okay. Has your company attempted to buy a license?

9 A I have not attempted to buy a license.

10 Q Is that a possibility for Zion Gardens?

11 A I -- I don't -- possibility? I guess -- I don't
12 know. If one is available, I guess it would be a possibility.
13 I don't know if there's one available or not.

14 Q What specific jurisdiction is Zion Gardens looking
15 for a license in?

16 A Two jurisdictions, unincorporated Clark County and
17 North Las Vegas.

18 Q And has Zion Gardens put a value on what it believes
19 that license is worth in each of those jurisdictions?

20 A There is no value to me on what a license is worth.

21 Q If somebody hypothetically were to sell a license to
22 you in North Las Vegas for \$100,000, is that something that
23 Zion Gardens would do -- purchase?

24 A Would I purchase it? I guess it depends upon all
25 the other terms. I'm sure it's not -- as you know as a

1 lawyer, right, if I'm buying something like a license, it's
2 not just, here, I'll give you a hundred thousand, you give me
3 the license. I don't know what the other terms are.

4 Q If it was that simple as a purchase and sale for a
5 fixed amount of money, do you believe that's something Zion
6 Gardens would look into?

7 A I think we would look into it, yeah.

8 Q And if Zion Gardens hypothetically did complete a
9 sale where it acquired a license in North Las Vegas, would you
10 still believe that there's a harm that warrant an injunction?

11 A Yeah.

12 Q Explain that for us.

13 A As I said, I was raised to be a person that's fair
14 and that believes in equity. And that for me more important
15 than anything else. It's not just about my opportunity. It's
16 about everyone's opportunity. It's about the process being
17 fair, it's about us living in a country where we can look to
18 the government to administer things fairly and to be open and
19 to be transparent when we have questions as citizens.

20 Q Do you believe that Ballot Question 2, one of the
21 primary reasons or fundamental reasons behind it was that the
22 public wanted the sale or the taxes generated from the sale of
23 recreational marijuana to go to schools?

24 A I don't have an opinion on that.

25 Q Are you aware of that?

1 A I am not aware of that.

2 MR. GUTIERREZ: Okay. Could we go to NRS 453D.020.

3 BY MR. GUTIERREZ:

4 Q And, Mr. Zakalik, this will be on the screen, but --

5 MR. GUTIERREZ: And specifically subsection (2).

6 BY MR. GUTIERREZ:

7 Q Have you seen this provision before?

8 A Let me read it. Okay.

9 Q Have you seen this before?

10 A I can't say that I have. I may have. I just don't
11 recall off the top.

12 Q As part of this ballot initiative says, it discusses
13 that revenue will be dedicated to public education and
14 enforcement of the regulations of this chapter. Do you see
15 that?

16 A I do, sir.

17 Q And are you aware that was also part of the ballot
18 initiative?

19 A I'm not necessarily aware, but I wouldn't disagree
20 with you.

21 Q Okay. And assume that's correct. Do you agree that
22 the public has an interest in the outcome of this injunction
23 because of the taxable revenue that will be generated from the
24 sale of marijuana through the 61 licenses?

25 A I think the public has an interest in this

1 injunction because they want the process to be fair and they
2 want it to be equitable.

3 Q But specific as to taxes, you see under the statute,
4 the ballot initiative, that's one of the reasons why the
5 public enacted and voted for this ballot question; is that
6 correct?

7 A Yes, sir.

8 Q Now, if that is what the public's intent was, don't
9 you believe the public has an interest in the outcome of this
10 injunction based upon taxable revenue that may or may not be
11 lost [inaudible] the operation --

12 A I don't think taxable revenue would be lost on the
13 basis of an injunction.

14 Q Explain that.

15 A Because I don't think the number of stores open have
16 a direct correlation to the amount of cannabis sold.

17 Q Okay. And for counties such as Douglas County that
18 don't have a dispensary, but would have one under this
19 process, you're saying that Douglas County wouldn't generate
20 revenue?

21 A I'm not familiar with Douglas County. I can't say
22 I've ever been there. The majority of my time has been in
23 Clark County.

24 Q What's the cost when you get final approval to get
25 your license?

1 A The cost to get final --

2 Q Yes. When these conditional licenses obtain final
3 approval what's the cost that's paid both to the local and to
4 the State for final approval?

5 A I can't say off the top I know.

6 Q So those additional licensing fees that would be
7 generated by these 61 license holders would go to the State;
8 correct?

9 A I assume so.

10 Q And it would generate taxable revenue; correct?

11 A It would generate licensing fees, I would assume, if
12 that's what you're speaking about.

13 Q Okay. And is it your position that 61 additional
14 dispensaries that would open wouldn't generate a single dollar
15 more, it would just dilute the market?

16 A No. It's my position that the -- I don't think that
17 the licensing fees themselves generate the overall lion's
18 share of the taxes paid. You know, I think that the sales
19 taxes, both on the cultivation level and on the dispensary
20 level is the lion's share of the taxes. I think the license
21 application fees are a drop in the bucket.

22 Q Who does your cultivation facility sell to? Which
23 dispensaries?

24 A We've sold to Inyo, we've sold to Frye, we've sold
25 to Sahara Wellness, we've sold to The Apothecary Shop, The

1 Apothecarium, we've sold to Cannacopia. Those are the ones
2 that I can recall.

3 Q So you've sold to people on both sides of this case;
4 fair to say?

5 A Yeah. I would say so.

6 Q Hypothetically Thrive, which has been enjoined from
7 opening their location on Sahara Avenue --

8 A Yes, sir.

9 Q -- how does that affect Zion Gardens?

10 A It doesn't.

11 MR. GUTIERREZ: Okay. I don't have any further
12 questions, Your Honor.

13 THE COURT: Anyone else on the defendants in
14 intervention? Mr. Koch.

15 DIRECT EXAMINATION

16 BY MR. KOCH:

17 Q Few followups, sir. On the diversity point do you
18 know what the diversity score that Zion Gardens received was?

19 A I do not off the top.

20 Q It received 20 out of 20 points. Are you aware of
21 that?

22 A I'm not aware as I sit here today. But if you tell
23 me it was --

24 Q Okay. And is it a case that all owners, officers,
25 or board members of Zion Gardens would be considered either a

1 diverse individual for purposes of the scoring here, either
2 female or a minority?

3 A I don't know. I don't know what is considered
4 diverse by the State. Like I said, they haven't been open and
5 clear about that.

6 Q Since the SB 32, when that was passed back in May
7 and there was some information that was presented by the
8 Department of Taxation, did you take the time to review that
9 information that was presented?

10 A I have reviewed some of it. I'm not sure if I
11 reviewed all of it.

12 Q Do you have any -- do you believe that -- well, let
13 me ask you this. You're talking about fairness is primary
14 concern; right?

15 A Yes, sir.

16 Q Okay. And to the extent that the Department
17 conducted a process and conducted it the same for everyone,
18 whether it was good or bad process, as long as it was the same
19 and equal, is that what the concern is? Or what's the concern
20 there?

21 A Yeah, the concern that it wasn't fair and equal --

22 Q Okay.

23 A -- the concern that -- is that we don't know if it
24 was fair or equal.

25 Q Okay.

1 A Those are concerns.

2 Q So -- and I guess I'm just trying to understand the
3 allegations and the claims.

4 A Sure.

5 Q One of the allegations or claims made by some of the
6 parties at least is that the scorers themselves that the State
7 hired to conduct the scoring may not have been competent to do
8 the scoring. Are you making that allegation in this case?

9 A I don't know if they were competent or not. I think
10 it's important that we vet whether they were competent or not.

11 Q Okay. Let's assume that they are average people
12 doing -- maybe not superhuman, but maybe not the -- they're
13 able to complete their tasks all of the same sort and they all
14 scored all the applications in the same way. Would you
15 believe that that would be at least with respect to that part
16 of the process the scoring fair and equal application process?

17 A Well, I think part of it is their job, part of is
18 the whole system itself. I mean, because that bears upon
19 their job.

20 Q And let me just ask, just limiting to that "their
21 job." Are you aware of anything that we indicate that the
22 scorers that were hired by the State to conduct that scoring
23 did anything that was partial to one person and -- or partial
24 to one person and detrimental to the other in the same way?

25 A Am I aware that they were impartial in any way as we

1 sit here today?

2 Q That they were partial.

3 A That they were partial in any way as we sit here
4 today.

5 Q Right.

6 A I would say I'm not aware that they were partial,
7 but I have concerns that they were impartial -- or that they
8 just weren't well suited to do the job or that, like I said,
9 the whole process was flawed.

10 Q And that's just based upon essentially the outcome
11 of the process? You don't have any -- I'm just trying to
12 narrow this down -- any specifics to say that Scorer 5 was
13 friends with this particular dispensary or anything like that?
14 Not a specific fact, it's just a concern about the overall
15 outcome of the process?

16 A I guess one of my concerns is the amount of money
17 that each licensee or each applicant paid to the State. And,
18 you know, if we had four hundred sixty-something and with that
19 money the State hired six -- five, six temporary graders to do
20 the work, to me that seems like a poor allocation of the
21 funds, and I think they could have done a better job to make
22 sure this process was fair and that they did the most to make
23 sure that every application was considered on its merits.

24 Q All right. One of the -- one of the claims again is
25 that fairness results from the fact that some applicants -- or

1 the licenses were not distributed equally among all
2 applicants, that there wasn't more broad spread of these
3 licenses. Is that one of the allegations that you believe
4 results in the unfairness that you're claiming?

5 A I don't think the result itself may indicate whether
6 it was fair or not. It may have some play in it. I think
7 that just on a knee-jerk reaction if you see, you know,
8 16 applicants get a lion's share, I think that may be a
9 concern just on a knee-jerk reaction. But as a lawyer I know
10 there's often things that come to light in trial, and we just
11 don't have all the facts right now. And the concern is that
12 some of the things that have been spoke about in these
13 proceedings -- and I haven't been here every day, just what
14 I've heard, that there may be some concerns.

15 Q All right. And your complaint is not, again, about
16 the statutes themselves or the regulations themselves, it's
17 the administration of those statutes or regulations?

18 A To my understanding it's either the statutes or the
19 administration, but I think that the overall process needs to
20 be fair, and I believe that we need to look into that.

21 Q Lastly, with respect to diversity you understand
22 that there was a point allocation that was given to diversity?

23 A Yes, sir.

24 Q Okay. Other than the points that were given for
25 purposes of diversity, do you think that any other factors

1 should have been graded differently for applicants that may be
2 considered diverse?

3 A I don't understand the question.

4 Q For example, financial category. There was a cutoff
5 of needing to have a certain amount of liquid assets, and
6 there was a threshold, there was a number there that was
7 looked for by the graders, they looked for that number, they
8 gave points based upon those numbers. Do you believe that
9 number should have been the same for all applicants
10 irrespective of diversity or nondiversity?

11 A I think if an applicant can show that they the
12 financial wherewithal to operate the company, the dispensary
13 and that meets the State requirements, I think that should be
14 adequate.

15 Q All right. And have you looked at Zion Gardens'
16 financial score that was given in this case?

17 A I can't say that I know it offhand.

18 Q So you're not dissatisfied with the financial score
19 -- at least as you sit here today you don't have any facts to
20 that?

21 A I don't have the score in front of me, so I can't
22 say.

23 Q Okay. All right. I think it was 37 out of 40,
24 something like that. I'd have to go back and look myself.
25 But you're not aware of anything as you sit here today to say,

1 we were treated unfairly in any way on financial scoring
2 because of Zion Gardens, the name, or anything else like that?

3 A The Zion Gardens name?

4 Q That anybody -- any of scorers saw, hey, this is
5 Zion Gardens, let's treat them differently than somebody else.

6 A I can't say. I don't know.

7 Q Okay. And overall would you say that scorers
8 outside of the specific diversity category should have been
9 also evaluated equally among all applicants to determine, as
10 you said, the financial ability or other categories that they
11 would look at that that should be graded equally irrespective
12 of diversity?

13 A I think the -- if equal means fairly and equal means
14 clarity and transparency, then yes.

15 MR. KOCH: All right. Thank you.

16 THE COURT: Anyone else on the defendants,
17 defendants in intervention have any questions? Mr. Shevorski.

18 MR. SHEVORSKI: Thank you, Your Honor.

19 DIRECT EXAMINATION

20 BY MR. SHEVORSKI:

21 Q Good morning.

22 A Good morning.

23 Q Steven Shevorski of the Attorney General's Office.

24 And you mentioned Mr. McCrary is a managing member,
25 as well, of Zion; correct?

1 A Correct.

2 Q And the cultivation business that you're in, do you
3 have a warehouse?

4 A Yeah, I do.

5 Q Okay. When you say I, Zion has a warehouse?

6 A No. Zion rents a warehouse.

7 Q Okay. Thank you. And was the warehouse existing in
8 2014 in the same state and square footage as it is today?

9 A It's 6,000 square feet today. In 2014 it was
10 6,000 square feet.

11 Q Okay. If Mr. McCrary gave an interview in 2018 that
12 he was considering expanding the warehouse to meet high
13 demand, do you have any reason to disagree with that?

14 A I'd like to see the interview or the article.

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

16 THE COURT: You may.

17 And, sir, he's giving you this to refresh your
18 recollection. So read it to the extent you need it, and then
19 if you have your recollection refreshed, let us know. If you
20 don't, just let us know, too, as one of the few witnesses who
21 actually understands what that means.

22 BY MR. SHEVORSKI:

23 Q Do you have any reason to disagree with --

24 THE COURT: Sir, is your recollection refreshed?

25 THE WITNESS: It is. It is, Your Honor.

1 MR. SHEVORSKI: Thank you, Your Honor. I forgot
2 that part.

3 THE COURT: Okay.

4 BY MR. SHEVORSKI:

5 Q After your recollection was refreshed do you have
6 any reason to disagree with Mr. McCrary's statement that he
7 was considering expanding the warehouse to met high demand?

8 A I think you need to understand what -- I don't know
9 what your definition of "expansion" is. So that's my
10 question.

11 Q Well, it's not my definition, it's a statement from
12 Mr. McCrary.

13 A Okay. I can't speak upon what his thought process
14 was at that point.

15 Q Okay. Do you disagree with his statement that there
16 was high demand for Zion's products in 2018?

17 A I think there was -- in 2018 I think there was -- I
18 think there was demand for high-quality cannabis. And we
19 produce high-quality cannabis.

20 Q Okay. The customers you mentioned, Thrive, and some
21 of the others, have they told you they're going to stop buying
22 your products?

23 A Some have.

24 Q As a cultivator.

25 A Some have. Some have stopped all communication.

1 Q Some have stopped all communication. But that
2 doesn't mean they won't communicate with you in the future;
3 right?

4 A I don't know what people do in the future.

5 MR. SHEVORSKI: Neither do I.

6 Thank you, Your Honor.

7 THE COURT: Thank you.

8 At this time, counsel, I'm going to take a short
9 recess. I have two matters that I'm going to talk to. One is
10 a conference call, and the other one is some lawyers who are
11 still having trouble with something from the 9:00 o'clock
12 calendar.

13 Mr. Zakalik, if you'd like to get up and walk
14 around, this is not a requested recess.

15 (Court recessed at 10:02 a.m, until 10:10 a.m.)

16 THE COURT: Mr. Zakalik, I apologize for the
17 interruption of your testimony.

18 Mr. Shevorski, you had completed your examination.

19 Were any of the other defendants or defendants in
20 intervention interested in asking Mr. Zakalik any questions?
21 Anyone else? Anyone else?

22 Your counsel has said you did a great job, they
23 don't need to ask any questions. Thank you, sir. Have a
24 great --

25 MR. GENTILE: Your Honor, Mr. Parker's not here.

1 Mr. Parker may have a few.

2 THE COURT: Mr. Parker, do you have any questions
3 for Mr. Zakalik?

4 MR. PARKER: I do. I do. Thank you for waiting.

5 CROSS-EXAMINATION

6 BY MR. PARKER:

7 Q Good morning.

8 A Good morning.

9 Q So I was listening to your testimony regarding
10 diversity, and I wanted to ask you a few followup questions.

11 A Yes.

12 Q Do you fit within a minority category?

13 A I guess it depends upon your definition of minority.

14 Q Okay. what race or ethnicity are you?

15 A I am half Russian Jew, half Lebanese.

16 Q Okay. And are you one of many owners, or one of a
17 few owners?

18 A One of two owners.

19 Q Okay. And is the other owner also potentially a
20 racial or ethnic diverse person?

21 A I guess it depends upon your definition of
22 diversity.

23 Q What would that owner's ethnicity or race be?

24 A From my understanding, and I'm not him, but I think
25 he's -- I think he's half Caucasian and then the other half is

1 African-American. He might have some Native American.

2 Q Okay. Now, do you know of any fully racially
3 minority-owned dispensaries in the state of Nevada?

4 A I can't say that I do know. There's probably some.

5 Q Okay. I'm aware of one.

6 A Okay.

7 Q Which is my client, Nevada Wellness Center. Are you
8 familiar with Frank Hawkins?

9 A I am.

10 Q Okay. Are you aware of any other black-owned
11 dispensaries in the state of Nevada?

12 A I am not.

13 Q You own a cultivation location?

14 A Correct.

15 Q Can someone come to you and force you to sell?

16 A Force me to sell product to them, cannabis to them?

17 Q No. Force you to sell your business.

18 A No, no one -- I guess no one could force me to sell.
19 Maybe constructively, but not directly.

20 Q Right. And, conversely, you can't force someone to
21 sell you a license even if you wanted to buy a license.

22 A No, I cannot.

23 Q No matter how amount of money, you know, it could be
24 a million dollars or billion dollars, they couldn't -- you
25 could not force someone to give you a license; is that

1 correct?

2 A Correct. I cannot.

3 Q So for the last couple of hearings this side of the
4 room has been asking questions regarding irreparable harm.
5 Are you familiar with that term?

6 A I am familiar with the term, yes, sir.

7 Q All right. And you understand that this Court is
8 weighing in part a decision on whether or not there would be
9 irreparable harm suffered by the lawyers and their clients on
10 this side of the room?

11 A Correct.

12 Q Including yourself.

13 A Correct.

14 Q All right. And so one of the arguments that has
15 been made is, well, we could -- you could be satisfied through
16 money. You understand that?

17 A Yes.

18 Q All right. The process that you involved your
19 company with was an application process; is that correct?

20 A That's correct.

21 Q And it didn't force you to buy a license, it simply
22 required that you pay an application fee and present yourself
23 as a company able to act as a dispensary in the state of
24 Nevada; is that correct?

25 A That's my understanding, yes.

1 Q So when you hear questions and arguments -- let's
2 say questions regarding why money would be sufficient is it
3 your opinion that, no, money's not sufficient, because even if
4 the Court were to give you \$10 million, you still couldn't
5 turn that \$10 million into a license?

6 MR. KOCH: Objection. Legal conclusion.
7 Argumentative.

8 THE COURT: Overruled.

9 THE WITNESS: Yes. So I don't know that I could
10 take \$10 million and get a license.

11 BY MR. PARKER:

12 Q Because you can't force someone to sell a license
13 for \$10 million?

14 A No, I cannot.

15 Q There is no way of making Mr. Koch's client or Mr.
16 Gutierrez's clients sell you their license for \$10 million, is
17 there?

18 A No.

19 Q So there's no amount of money that this Court could
20 award you that would turn into a license, would it?

21 A I agree with that.

22 Q So your ability to get a license was dependent upon
23 the application process being judged fairly; is that correct?

24 A Yes, sir.

25 Q All right. So you would agree with me, sir, that

1 money does not equate to fairness?

2 A No, money does not equate to fairness.

3 Q Money does not -- ask it this way. Being white or
4 having a company owned by a majority of white owners shouldn't
5 entitle you to a better part of this process; right?

6 A I should hope not.

7 Q Because of you who you may know, relationships you
8 may have, that shouldn't entitle to some type of preference in
9 the process, should it?

10 A It should not.

11 Q So if Mr. Koch's clients or Mr. Gutierrez's clients
12 happen to know and have cell numbers of those at the
13 Department of Taxation regulating this process, that shouldn't
14 give them an advantage to you, should it?

15 A It should not.

16 Q Now, you said something I thought was very pointed.
17 If you're not awarded a license as a result of this
18 application, then constructively you may be put out of
19 business because of market share and dwindling need for your
20 product; is that correct?

21 A I believe so.

22 Q Have you looked at it in terms of minority
23 ownership? Let's take Frank Hawkins, Nevada Wellness Center.
24 He may not be able to afford to buy a license, just like you
25 may not be able to afford to buy a license; is that correct?

1 A I don't know, because I don't know that I could buy
2 a license.

3 Q Right. You shouldn't have to buy one, should you?

4 A I don't think so.

5 Q Right. So if you're not -- if you're not afforded a
6 license by a fair process, then the chance of you or Nevada
7 Wellness Center, the only black-owned dispensary in the state
8 of Nevada that I'm aware of, there's probably not chance after
9 this process to get a license. Would you agree?

10 MR. KOCH: Objection. Speculation. Lacks
11 foundation.

12 THE COURT: Overruled.

13 THE WITNESS: I think given what I've seen in this
14 industry in this state and other states, that there's a
15 consolidation of power and market share to squeeze out smaller
16 operators. And I don't think that we would have an ability to
17 even purchase a license if this process is not completed in a
18 fair and equal manner.

19 MR. PARKER: Nothing further, Your Honor.

20 THE COURT: Anyone else have any questions?

21 MR. GUTIERREZ: A few followup questions.

22 THE COURT: All right.

23 REDIRECT EXAMINATION

24 BY MR. GUTIERREZ:

25 Q Mr. Zakalik, are you aware that -- of some of the

1 factors that were put into place -- are you aware of some of
2 the factors that were -- and criteria that was used to grade
3 the 2018 application process?

4 A Some of -- yeah, I mean, diversity being one of
5 them.

6 Q What are some of the other ones that you're aware
7 of?

8 A I think financial ability, organizational structure,
9 whether your policies and procedures were adequately written
10 and well thought out, things of this nature.

11 Q And taxes paid over the last five years was one of
12 those factors, as well?

13 A I think taxes paid, yes.

14 Q Do you remember what your score was on that?

15 A I don't recall.

16 Q If I told you it was a 1 out of 10, does that
17 refresh your memory at all?

18 A No, it doesn't refresh my memory. I mean, if you
19 tell me as an officer of the court that it was 1 out of 10,
20 I'll believe you.

21 Q Have you looked at the grading evaluation sheets for
22 your company?

23 A I have looked at them.

24 Q Okay. And you've seen what the graders looked at
25 when they scored your company?

1 A I see a they were supposed to look at.

2 Q But they scored you 1 out of 10 on taxes paid;
3 correct?

4 A I don't know.

5 Q Well, you said that you looked at the sheets.

6 A I have. I just don't know as we sit here today.

7 Q What about for charitable contributions? Do you
8 recall what you received?

9 A No, sir.

10 MR. GUTIERREZ: Your Honor, if I may approach.

11 THE COURT: You may. And is this an exhibit, or are
12 you refreshing his recollection?

13 MR. GUTIERREZ: Just refreshing recollection, Your
14 Honor.

15 THE WITNESS: Okay.

16 BY MR. GUTIERREZ:

17 Q You see that? Does that refresh your memory, Mr. --

18 A As to what?

19 Q As to the point score you were given for that
20 particular category.

21 A No. Because I see a handwritten score here.

22 Q Okay.

23 A So I don't think they wrote it in hand. That'd be
24 my guess.

25 Q You've looked at the tally sheets, though; correct?

1 A Tally sheets?

2 Q The tally -- the grading sheets for the scorers.
3 You've seen this sheet before, though; right?

4 A I can't say that I have seen that sheet. It doesn't
5 ring a bell off the top of my head.

6 Q So you've been asking for transparency in this
7 process, and you haven't seen the sheets for your own scoring?

8 A I'm saying I haven't -- I don't know if I've seen
9 that sheet. If you're representing that that's the sheet that
10 they gave me, I would have an issue with that, because you
11 have handwritten notes in there. And I don't think they put
12 handwritten notes in the sheet I saw.

13 Q Well, this was the grader's handwritten notes.

14 A Okay. So I haven't -- yeah. So I don't know if I
15 recall seeing that sheet in particular. If you're telling me
16 that was the grader's handwritten notes, I don't know which
17 grader that was.

18 Q There's been sheets that have scores listed. Is
19 that what you've seen?

20 A I've seen scores lists, yes, sir.

21 Q Okay. But have you seen any sheets where they have
22 handwritten notes from the Manpower graders on your particular
23 company?

24 A As I sit here today I cannot recall.

25 Q Okay. And is that something that would give you

1 more transparency in this process if you were able to see
2 that?

3 A More as compared to when?

4 Q As to when you filed the lawsuit and you were asking
5 for transparency.

6 A I guess it gives more, maybe not adequate, though.

7 Q Okay. So when you're looking at taxes paid,
8 charitable contributions being part of the evaluation process
9 do you believe that those factors should not have been
10 considered?

11 A I think that the factors that were mandated by the
12 State should be considered. So if those were mandated by the
13 State, then, Your Honor, I think they should have considered.

14 Q Okay. Mr. Parker asked you about buying a license
15 for \$10 million, and I think you said that you can't control
16 whether somebody would sell it to you; is that right?

17 A Correct.

18 Q If Thrive and Mr. Peckman here today were to sell
19 you a license, a conditional license for \$10 million, is that
20 something you would do?

21 A It's something I would consider.

22 Q Okay. And is that something if you considered and
23 you did would solve any harm that you're claiming in this
24 case?

25 A No.

1 Q And specifically because you believe the process
2 itself and how the applications were done was incorrect?

3 A I believe that this process has to be fair, I
4 believe there has to be transparency, and there has to be
5 equality.

6 Q But yet you haven't look at your own scores for your
7 company on what the graders did for your company.

8 A I didn't say that.

9 Q You haven't looked at the tally sheets on the notes
10 that they did for your company?

11 A I didn't say that.

12 MR. GUTIERREZ: Okay. Thank you.

13 THE COURT: Anyone else? Mr. Koch.

14 REDIRECT EXAMINATION

15 BY MR. KOCH:

16 Q As a cultivator you sell to dispensaries; correct?

17 A I try to.

18 Q All right. Okay. I hope that's who you sell to.

19 A Say again.

20 Q Hopefully that's who you sell to; right? You've got
21 to sell -- that's -- your market is to sell to dispensaries,
22 licensed dispensaries in the state of Nevada?

23 A Yes, sir.

24 Q All right. And if there are more dispensaries
25 through this process, you've said it may not increase the

1 market. But you wouldn't expect it to decrease the size of
2 the retail market, would you?

3 A If there are more dispensaries, would that itself
4 decrease the market? I don't know.

5 Q Okay. I guess my question -- you said, I may get
6 driven out of business. Your actual customers are the retail
7 dispensaries who are going to buy from you. If there are more
8 retail dispensaries likely it is you'll either get more
9 business or at least stay the same?

10 A I would disagree.

11 Q Okay. You think it's going to shrink?

12 A I think that the more power that's consolidated in
13 the small number of groups leads to monopolistic issues.

14 Q All right. One of the customers you referenced was
15 Thrive; correct?

16 A Yes, sir.

17 Q And that's one of the entities that received
18 multiple licenses in this proceeding. You understand that?

19 A I do.

20 Q Okay. With respect to the valuations of these
21 licenses, have you actually looked at what retail dispensary
22 licenses have sold for since it's become legal to sell
23 marijuana in the state of Nevada?

24 A It's hard for me to say what they've sold for. I
25 mean, these deals are so convoluted, it's hard for me to say.

1 Q You're aware that multiple licenses have been sold
2 since they've been permitted to operate; correct?

3 A I believe so.

4 Q Okay. And have you looked into -- you said, I don't
5 know if I can get one for \$10 million. You haven't actually
6 made any offers for \$10 million; right?

7 A I have not made any offers.

8 Q Have you actually talked with anyone who has a
9 license to ask if they might be interested at any particular
10 price point?

11 A Before I went to even endeavor to buy a license I
12 wanted to go through the State process to see if I could earn
13 my license fairly.

14 Q And so you've had no discussion either with existing
15 license holders, for example, somebody who already has a
16 retail license, is operating outside of this application
17 process? You haven't talked to anybody in that category, have
18 you?

19 A Can you say the one more time. I'm sorry.

20 Q There's existing retail dispensaries, correct --

21 A Yes.

22 Q -- even before this application process?

23 A Correct, sir.

24 Q Have you asked any of them if they would be
25 interested in selling the license?

1 A I have not asked them.

2 Q And have you taken any steps to look at potential
3 acquisition, maybe getting funding sources from banks, from
4 anyone else in order to acquire money to purchase a license?

5 A I have not asked, I have not inquired to buy a
6 license. I first wanted to go through the State process.

7 Q Okay. And I guess my question on that, Mr. Parker
8 essentially said, if you don't get one through the State
9 process, you may never ever get a license. But you said you
10 first want to do State process and then it's possible to look
11 at the potential for buying a license afterward; is that
12 right?

13 A Before I even consider that I would go through the
14 State process. When I answered Mr. Parker's question I based
15 it upon what I've seen, what I know about human nature, things
16 of that nature.

17 Q And with that, if you came to somebody, let's say --
18 you talked about \$10 million. If you came to somebody with
19 \$100 million you may not be able to force them to sell their
20 license, but do you think somebody would sell you a license
21 for \$100 million?

22 A I don't know.

23 Q How about a billion dollars if it's --

24 A I don't know.

25 Q Okay. Have you seen any licenses that have sold for

1 a billion dollars?

2 A I have not seen a license that has sold for a
3 billion dollars.

4 Q Okay. That would be way above the market price; are
5 right?

6 A I don't know what the market price is.

7 Q So you don't have any understanding of what a
8 license might buy -- might be sold for in the current market?

9 A I don't know.

10 MR. KOCH: Thank you.

11 THE COURT: Anyone else?

12 MR. SHEVORSKI: No, Your Honor.

13 THE COURT: Thank you, sir. Have a very nice
14 afternoon.

15 THE WITNESS: Thank you.

16 THE COURT: Next witness.

17 MR. GUTIERREZ: Thank you, Your Honor. We'll call
18 Craig Rombough.

19 CRAIG ROMBOUGH, DEFENDANTS' WITNESS, SWORN

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

22 THE WITNESS: My name is Craig Rombough. C-R-A-I-G
23 R-O-M-B-O-U-G-H.

24 THE COURT: Sir, there's water in the pitcher that
25 you've found already. There are M&Ms in the dispensers behind

1 you, and there are exhibits in the many binders around you.
2 If you need the statute, let me know. I have a book. Counsel
3 will try to display it for you -- any exhibits for you on the
4 monitor.

5 Please proceed.

6 MR. GUTIERREZ: Thank you, Your Honor.

7 DIRECT EXAMINATION

8 BY MR. GUTIERREZ:

9 Q Good morning, Mr. Rombough. Could you tell us what
10 your current position is.

11 A I'm the president of Mother Herb.

12 Q And what type of company is Mother Herb?

13 A We're a cultivation in the state of Nevada.

14 Q And how long has Mother Herb been operating as a
15 cultivation facility in Nevada?

16 A I was one of the first open since 2014.

17 Q And does Mother Herb have a dispensary or production
18 license?

19 A We do not.

20 Q How many facilities does Mother Herb have?

21 A We have one facility.

22 Q Where is that located?

23 A 6265 Saddle Tree Drive, Las Vegas, Nevada 89118.

24 Q And in the 2014 process were you part of the
25 application process?

1 A I was.

2 Q And did Mother Herb apply for any dispensary
3 licenses in 2014?

4 A In 2014 we did not apply for a production license,
5 and we did not apply for a State dispensary license.

6 Q Why not?

7 A We felt at the time that the industry needed to
8 focus on growing, and the product is going to stem from the
9 actual flower. We thought that was the most important license
10 at the time.

11 Q And at some point did that change, where you wanted
12 to have Mother Herb get into the dispensary business?

13 A Absolutely. We always planned on getting a
14 dispensary license, and we always felt that that was the way
15 it was going to go.

16 Q And how many -- strike that.

17 How many dispensary licenses did Mother Herb apply
18 for in the 2018 process?

19 A We applied for six.

20 Q Do you know what locations Mother Herb applied for
21 dispensary licenses in?

22 A Clark County, City of Henderson, City of Las Vegas,
23 City of North Las Vegas, Reno, and Reno area.

24 Q And were -- what was your role in the 2018
25 application process?

1 A Six months of my time and countless thousands of
2 hours.

3 Q Who actually filled out your application?

4 A I did with my team of five people.

5 Q And did you believe that not having a dispensary
6 going into the 2018 process set you back when you were
7 applying?

8 A Because of the way that they created the second
9 statutes, I did feel that it was written in a way that was
10 flawed.

11 Q When you say second statutes what are you
12 discussing?

13 A I'm talking about when they did the new NRS -- they
14 had the meetings and then they did the new NRS, where we were
15 talking about anybody with a 10 percent ownership and grading
16 the dispensaries, et cetera, et cetera.

17 Q So you're talking about the regulations that were
18 adopted for the 2018 process under NAC 453D, or the --

19 A Sorry. Correct. Yes, correct.

20 Q Okay. So the record will be clear, you're speaking
21 about the regulations.

22 A I'm sorry. Correct, yes.

23 Q Okay. So you don't have an issue with the statute,
24 with NRS?

25 A No. The original statute in 2014 I don't have an

1 issue with.

2 Q Or the statute that governs recreational marijuana,
3 which is NRS 453D? Do you have an issue with that?

4 A Maybe specifically, but nothing off the top of my
5 head, no.

6 Q Okay. Well, we're talking about the regulations for
7 2018. I thought -- so your testimony and I think one of your
8 business partners testified at -- or submitted some documents
9 in support of your position on those regulations?

10 A I have no recollection of that. I don't think so,
11 though.

12 Q Okay. But you were saying that the second statute
13 or the regulations, we'll call them, was flawed?

14 A In January of 2018 I had spoke and indicated that I
15 felt they were flawed and they would create a monopoly or an
16 oligopoly.

17 Q Who did you speak to?

18 A That was at the State sessions. I should be on the
19 record with that.

20 Q And was it your position that they were flawed
21 because of how they affected cultivators?

22 A Basically that the process was flawed, it wasn't
23 fair, and, again, I felt that it would create a monopoly and
24 oligopoly, and that's essentially exactly what happened with
25 the issuing of the licenses.

1 Q But back to my question on -- did you believe that
2 the cultivators were not given a fair chance during the
3 process?

4 A [Unintelligible] say I think just cultivators, but
5 just in overall. We were one of the first to open up, we
6 opened up to 100 percent of our capacity, we paid millions of
7 dollars in taxes, and we felt that we should be given a fair
8 share opportunity for one of the licenses.

9 Q You're not in favor of the vertical integration
10 process --

11 A I'm absolutely in favor of the vertical integration
12 process.

13 Q Okay. So I read an article that you had. You
14 quoted -- where you said, "Cultivators put up a lot of money
15 up front and should be given a fair shot or even a greater
16 shot to create a fair market." Do you recall saying that?

17 A I absolutely agree with that.

18 Q And you believe that?

19 A Yep.

20 Q Who's Greg Nelson?

21 A He's one of our partners.

22 Q Greg Nelson said in the same article, "There are a
23 lot of cultivators in town that are scared to death if they
24 don't get a dispensary license." Is that your position?

25 THE COURT: Counsel, are you going to admit that

1 article, since you're reading from it?

2 MR. GUTIERREZ: I can admit it, Your Honor. We

3 have --

4 THE COURT: Is there any objection?

5 MR. CRISTALLI: I haven't seen it.

6 MR. GENTILE: I'd like to see it.

7 MR. CRISTALLI: Yeah. We haven't seen it.

8 THE COURT: Counsel, you can't read from a document

9 that's not admitted. We're going to take a short break while

10 you figure this out.

11 (Court recessed at 10:31 a.m., until 10:48 a.m.)

12 THE COURT: So did you get some proposed exhibits

13 for me? You can be seated.

14 MR. GUTIERREZ: We did, Your Honor.

15 THE COURT: Did you mark them?

16 MR. GUTIERREZ: Yes. Proposed Exhibit 5060 will be

17 an article dated --

18 THE COURT: Proposed exhibits.

19 MR. GUTIERREZ: Proposed exhibit.

20 THE COURT: Has anyone who's sitting on this side of

21 the room, besides you, seen them?

22 MR. GENTILE: No, Your Honor.

23 THE COURT: They all said no.

24 MR. GUTIERREZ: We're putting them --

25 THE COURT: What happened with the showing it to --

1 MR. GUTIERREZ: -- we're putting them out, right, as
2 we speak, Your Honor. And I showed them my digital copies,
3 but we don't have hard copies.

4 THE COURT: Okay. I guess I'll take another break,
5 Counsel. Counsel, you can't read from an un-admitted
6 document.

7 MR. GUTIERREZ: Your Honor --

8 THE COURT: I let you ask questions to -- about the
9 substance of the document before board that wasn't admitted, I
10 let you refresh a witness's recollection with it, but you
11 can't sit there and read from it.

12 MR. GUTIERREZ: I apologize, Your Honor. Just was
13 trying to get his position on cultivators that he had.

14 MR. PARKER: Mr. Gutierrez, can you simply ask him
15 the questions without having him see it -- I mean, without
16 reading it into the record?

17 MR. KEMP: Maybe we can jump to another area --

18 MR. PARKER: Yeah.

19 MR. KEMP: -- and come back to this.

20 MR. GENTILE: If you want me to address this, I can
21 do this right now.

22 THE COURT: I'd be happy to listen.

23 MR. GENTILE: Okay. It appears to me from questions
24 that I've asked of Mr. Bult that the two statements that
25 Counsel has read -- that read from this were statements of Mr.

1 Rombough and of another owner of that business. And so I
2 think that those would be admissible for purposes of an
3 adverse -- a party opponent. However, the document itself and
4 everything else in it is rank hearsay. And so I would object
5 to it on hearsay grounds.

6 THE COURT: Okay. So don't read from it.

7 THE WITNESS: I don't think those are necessarily my
8 words, either. Those might have been my partner's, but --

9 THE COURT: So the objection is sustained.

10 MR. GENTILE: Thank you.

11 THE COURT: Don't read from it, but you're allowed
12 to ask him the substance of it related to his statements.

13 MR. GUTIERREZ: Fair enough.

14 BY MR. GUTIERREZ:

15 Q Mr. Rombough, you've given statements regarding
16 vertical integration; correct?

17 A Correct.

18 Q You've given statements regarding how cultivators
19 could be affected by certain regulations; correct?

20 A Correct.

21 Q And just can you tell us generally what those
22 statements were about your position on cultivators when they
23 -- when the Nevada -- when Nevada was adopting the 2018
24 regulations for the sale of marijuana.

25 A Vertical integration is -- I don't have a problem

1 with vertical integration, but it needs to be applied to
2 everyone. So everyone needs to be able to be allowed to be
3 vertically integrated. If you take the 10 percent of people
4 that want to control all the dispensaries and they can grow
5 cultivations as large as they want, then 90 percent of the
6 cultivators are not part of the free market.

7 Q Okay.

8 A And that's a big problem for the fairness in
9 cannabis, for the original spirit of 2.

10 Q And you were making these objections to who?

11 A We made them to the State of Nevada I believe it was
12 in January of 2018.

13 Q Okay. Did you have any other objections to the
14 regulations?

15 A Not off the top of my head.

16 Q Did you have objections to the use of background
17 checks?

18 A My company was 100 percent checked. Every single
19 person on my company was checked, and I assumed that that
20 should have been applied to everybody that made applications.

21 Q Okay. The question was did you have any objections
22 that you made to background checks?

23 A I don't have any objections. It's 100 percent of
24 the people should have been checked.

25 Q Do you have any -- did you make any objections as to

1 diversity being used as a scoring criteria for the 2018
2 process?

3 A I don't have a problem with diversity. I think it
4 should be diverse.

5 Q And when you say it should be diverse, what do you
6 mean by that?

7 A Our society's diverse, people that use the product
8 are diverse, the company should be diverse.

9 Q Do you believe as a cultivator that having a diverse
10 ownership or operators is important to your operations?

11 A Absolutely.

12 Q Can you explain why.

13 A Again, our culture is diverse, society is diverse,
14 users are diverse. It's just the proper way.

15 Q Okay. What other objections did you have to the
16 adoption of the regulations?

17 A Again, none that I can think of.

18 Q Okay. At some point you received the results of
19 your application scoring in 2018?

20 A We did.

21 Q And how many licenses were you awarded?

22 A We did not receive a license.

23 Q And at what point did you decide to bring a lawsuit?

24 A When I realized that there was no way to find out
25 why we didn't get a license. And we felt that our license

1 applications were 100 percent complete and 100 accurate, and
2 we felt that because we were cultivators that were one of the
3 first to open and we did exactly our business plan, we've
4 never sold to outside investors, we've never sold to
5 corporations, we've never even changed hands at all, we felt
6 that our score should have been 250, and we should have been
7 awarded at least one license, if not six.

8 Q You mentioned that you didn't sell to any outside
9 companies. Do you have a objection to people who have sold to
10 public entities?

11 A No, but it should play to the criterion of people
12 getting a new dispensary license. I don't think it's fair
13 that somebody gets 10 licenses and turns around and sells
14 them.

15 Q One of the elements that you're seeking in your
16 complaint is compensatory damages or money from the State.
17 Can you tell us why.

18 A I do have irreparable damages to my reputation, to
19 my corporation, to all of my people that basically have a
20 move-up plan, as well as the time that I'm never going to get
21 back that I spent doing all of these applications for months
22 and many, many hours.

23 Q So let's break those down. You said reputation you
24 have damage to; is that correct?

25 A Absolutely.

1 Q How is your reputation damaged any different than
2 anybody else who didn't receive a license?

3 A Again, my reputation as a business person carrying
4 on the cannabis business.

5 Q No. I'm asking you specifically how is your
6 reputation damaged any different than anyone else who didn't
7 receive a license?

8 A I can't speak for anyone else.

9 Q So you're talking in general your reputation was
10 damaged because you did not receive a license?

11 A Absolutely.

12 Q Do have any examples of that?

13 A I think it's obvious. We've been in business since
14 the start, and we've done everything the State has of us,
15 we've paid millions in taxes, and we should have received a
16 dispensary license. Again, that was always our plan.

17 Q You said there was damage to your corporation. What
18 does that mean?

19 A Well, if we get back to the integration question,
20 there's only 60 places that we can sell our product. Those 60
21 places grow product themselves. So if we don't have an outlet
22 for our product, we don't have a business. A dispensary is an
23 outlet for our product.

24 Q Are you aware if any cultivation facilities received
25 a license in the 2018 round?

1 A I'm not aware.

2 Q You said you have damage to your people. What is --
3 or people you hired, is that what you said?

4 A My diverse group of people, they have a succession
5 plan to work in a dispensary or grow with the company.

6 Q Did you hire people before you got the dispensary
7 license specifically for a dispensary?

8 A We put together a team of people that certainly put
9 time, effort, and there were some funds, as well.

10 Q And then tell us about what relief you're seeking --

11 A We also --

12 Q Let me finish the question --

13 A Okay.

14 Q -- so we have a clear record.

15 THE COURT: Thank you.

16 BY MR. GUTIERREZ:

17 Q Tell us about the relief that you're seeking from
18 this injunction process.

19 A I just want an outlet for my product. I want it to
20 be fair. I want a transparent process. I don't think any of
21 that has happened.

22 Q Do you believe that the release of Senate Bill 32
23 has given transparency to the process?

24 A Somewhat. But it doesn't go -- it can't go
25 backwards with that. And the whole process was not

1 transparent, which created all the problems that we're at
2 today.

3 Q What's your harm going forward, though, as we sit
4 here today?

5 A I need an outlet for my product, Otherwise I'm
6 going to go out of business. And we need a fair and free
7 market. We don't need a monopoly, we don't need an oligopoly.
8 Again, I was one of the pioneers of the State of Nevada
9 cannabis program, and now I'm going to be shut out if I don't
10 have an outlet for my product.

11 Q Which dispensaries are you selling to now?

12 A We try to sell to all 60. Some of them -- some of
13 the people in the lawsuit that will no longer buy our product,
14 and if they get licenses, that's going to hurt us.

15 Q And you believe having your dispensary is your only
16 outlet for your product?

17 A I wouldn't sell to the black market. I don't --
18 that is our only outlet.

19 Q Well, have dispensaries stopped buying from you?

20 A Correct.

21 Q Okay.

22 A The whole point of the 2 vote was to put ethical
23 businesspeople in charge of cannabis. We wanted to get it
24 away from the black market. Now you've got 90 cultivators
25 that may not have an outlet for their product. That's a

1 problem. That's why we need to be transparent. We need to be
2 fair. The process needs to be fair.

3 Q Where in the ballot initiative or Statute NRS 453D
4 does it prevent vertical integration?

5 A Again, you need to have a license to have vertical
6 integration.

7 Q That's not my question, though. Where in the
8 statute does it prevent vertical integration?

9 A It doesn't.

10 Q So it's allowed by law; correct?

11 A Absolutely.

12 Q Do you have any objection to the State use of
13 independent contractors to grade the process?

14 A I think it should be people that are in the business
15 that should be doing the evaluations.

16 Q So you believe that some of the people that work for
17 the Department of Tax should have been doing the actual
18 grading?

19 A People that are in the industry should do it.

20 Q Do you believe that if somebody's in the industry
21 they may have a particular bias towards one dispensary versus
22 another?

23 A Not necessarily working for the specific businesses,
24 but knowledge of the industry.

25 Q Okay. You believe that the grading process needed

1 to be impartial to comply with the statute; correct?

2 A Again, I really don't have those answers. I just --
3 the whole process was not transparent to me. No one can tell
4 me why I don't have a dispensary license.

5 Q Okay. If you were awarded a dispensary license,
6 would you be sitting here today bringing a lawsuit?

7 A I would have to see the way the whole thing went
8 down. Again, I believe in fairness and fairness in the
9 process. I can't answer that.

10 Q Okay. But you are asking to stop the 61 licensees,
11 who received licenses from opening; is that correct?

12 A I'm asking for an outlet for my product.

13 Q No. The question is you're asking the Court to stop
14 the process from -- these 61 licensees from opening; is that
15 correct?

16 A Again, my lawyers are dealing with the injunction.
17 My job is to get an outlet for my product.

18 Q Have you attempted to buy a license --

19 A We have.

20 Q -- for a -- you have?

21 A I have.

22 Q Who did you attempt to buy a dispensary license
23 from?

24 A We tried to buy a license from day one.

25 Q Tell us who you talked to.

1 A Nobody was able to offer us a license, and we were
2 unable to purchase one.

3 Q Tell us who you spoke with about purchasing.

4 A I don't have any specific recollection, but we've
5 been trying to get one from day one.

6 Q Well, day one would have been some time in December;
7 is that fair?

8 A Are you talking December of 2018?

9 Q Yes.

10 A No, I'm talking more like we've wanted a dispensary
11 since we realized -- again, in 2014 we thought that flower was
12 the important license. Obviously, we saw the way the market
13 was going, and we understood that it was no longer a free
14 market. People were buying our product for \$600 a pound and
15 selling it for \$6,000 a pound. We realized that the
16 dispensary license was going to be the important license. We
17 needed to have an outlet for our product.

18 Q Okay.

19 A So we tried to find a way to do that, and we have
20 been unable to do that. So it's important to -- that's why we
21 applied for six licenses, that's why it's so important to us.

22 Q Okay. Let me limit the question to after you
23 received notice on December 5th, 2018, that you did not win a
24 license. What steps have you taken to purchase a license?

25 A We've contacted people. Nobody wants to sell a

1 license.

2 Q Who have you contacted?

3 A I can't name exactly, but we've contacted a bunch of
4 different corporations and different people that say they have
5 people that want to sell it. But there is not a license
6 available, and there's certainly not enough licenses available
7 for all the people that are looking for them.

8 Q You can't name one company that you've contacted?

9 A I can't. Not off the top of my head, no.

10 Q What have you offered for a license?

11 A There's none available.

12 Q You haven't spoken to Thrive, correct, about
13 purchasing a license?

14 A I have not.

15 Q You haven't spoken to Essence about purchasing a
16 license; correct?

17 A I have not. Thrive no longer buys our product and
18 is not happy with us.

19 Q How is Thrive opening a location under their
20 dispensary on Sahara affecting your business?

21 A They used to buy product from us, they no longer do.

22 Q And that's your only basis to prevent Thrive from
23 opening on their Sahara location?

24 A Again, I don't have an outlet for my product, so
25 it's certainly going to hurt me.

1 Q Besides not having an outlet for your product, do
2 you have any other claim of harm you're making?

3 A Other than what I've already stated, no.

4 MR. GUTIERREZ: Pass the witness, Your Honor.

5 THE COURT: Any of the other defendants or
6 defendants in intervention wish to ask questions? Mr. Koch.

7 DIRECT EXAMINATION

8 BY MR. KOCH:

9 Q Mr. Rombough, you've applied for six licenses; is
10 that right?

11 A Correct.

12 Q You hoped to get all six licenses?

13 A I'd be happy to get one or two.

14 Q So you applied for six, you wanted six; right?

15 A Correct.

16 Q If you were awarded six licenses, would you accept
17 all six licenses?

18 A Absolutely.

19 Q And it wouldn't be unfair if you got your six
20 licenses and you -- based on your applications, would it?

21 A Again, if the system was fair and I thought the
22 process was fair, which it wasn't, so it would have to be a
23 whole different world to understand that -- but -- the system
24 that we went through and the process was unfair. I don't
25 think it's relevant.

1 Q Well, my question I guess is if you had received all
2 six licenses through the process you would have accepted all
3 six licenses.

4 A If I thought the process was fair, I guess we would
5 have.

6 Q And what would you have done to determine whether
7 the process was fair after you received your six conditional
8 licenses?

9 A That's a good question. I don't have an answer for
10 that.

11 Q Okay. So it's the fact that you did not get the
12 licenses which is what caused you to determine the process was
13 unfair?

14 A No.

15 Q You never made a dollar offer for any of those --
16 you said you tried to get -- tried to get a license since 2014
17 or '15. You never put actual money on the table, did you?

18 A Nobody gave me -- nobody had an offer of a license
19 for sale.

20 Q Right. There wasn't somebody out on the street
21 saying, hey, I've got a license for sale. But you didn't
22 approach somebody saying, I'll give you \$10 million for your
23 license today, did you?

24 A That is a scenario that did not happen, no.

25 Q Okay. Nor any other dollar amount. You didn't go

1 to anybody with an offer of money and give them a proposed
2 dollar amount for that license since 2014; correct?

3 A There was not a license available.

4 Q So the answer to my question is, no, you did not do
5 that?

6 A There was no license available.

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

8 THE COURT: Any further? Mr. Shevorski.

9 MR. SHEVORSKI: Thank you, Your Honor.

10 DIRECT EXAMINATION

11 BY MR. SHEVORSKI:

12 Q Good morning, Mr. Rombough.

13 A Good morning.

14 Q Does Mother Herb have an advisory board -- or strike
15 that. Did it have an advisory board when it applied for a
16 conditional license in 2018?

17 A An internal advisory board?

18 Q However Mother Herb defines its --

19 A We have a board of directors.

20 Q Do you have an advisory board?

21 A We have a board of directors that acts as an
22 advisory board.

23 Q Okay. So did you prepare the application yourself?

24 A I did, with a team of five people.

25 Q Okay. And there'd be six people on that advisory

1 board?

2 A I'd have to look at the application, but we had a

3 very thorough team that we put together for our dispensary.

4 Q Okay. Does Dr. Carmen Jones sound familiar?

5 A It does, yes. Sir, what's the first name?

6 Q Carmen Jones.

7 A Okay. Yes, yes. I thought you said Connor.

8 Q Hilda Avila?

9 A I'm sorry?

10 Q Hilda Avila?

11 A Correct.

12 Q Brian Chavez?

13 A Correct.

14 Q Zachary Paul?

15 A Yep.

16 Q Michelle Romanow?

17 A Okay.

18 Q Yes?

19 A Yep.

20 Q And Brian Romanoff?

21 A Yep.

22 Q You mentioned monopoly. Have you studied economics?

23 A I have.

24 Q Okay. Do you have --

25 Q I've got a business degree.

1 Q You've got a business degree?

2 A I do. I do. I'm actually the one that coined the
3 phrase in 2018 here about the oligopoly, because it's really
4 not a monopoly it's more of an oligopoly.

5 Q Okay. Did you attend a university?

6 A I did.

7 Q What university did you attend?

8 A I attended the University of Lethbridge.

9 Q I couldn't hear you. I'm sorry.

10 A The University of Lethbridge.

11 Q Lethbridge?

12 A Yeah.

13 Q Where is that?

14 A That's in Alberta, Canada.

15 Q After university did you attend any post -- did you
16 obtain a Doctorate in economics?

17 A I don't have a Doctorate in economics.

18 Q Do you have a Master's degree in economics?

19 A I do not, but I did study economics.

20 Q You studied economics?

21 A Correct.

22 Q Did you -- does -- in the university that you
23 attended did they have minor and major studies?

24 A They do.

25 Q Did you obtain a major in economics?

1 A I've got a minor in finance.

2 Q Minor in finance.

3 A Which is economics related.

4 Q Okay.

5 A And I have taken more than one economics course for
6 that finance degree.

7 Q More than one? How many?

8 A I can't say off the top of my head, maybe three.

9 Q Have you published any papers in economics?

10 A I have not.

11 Q Have you published any papers regarding monopoly?

12 A Maybe internal ones, but dependent on what you
13 consider published, I haven't --

14 Q Peer reviewed?

15 A Maybe peer reviewed, but not published.

16 Q What is that called?

17 A I can't think of one off the top of my head. We're
18 talking many, many years ago.

19 Q How many years ago?

20 A Let's see. I would have graduated about 1992, 1993.

21 Q Okay. Have you studied demand elasticity with
22 respect to marijuana?

23 A As part of my job as president of Mother Herb I have
24 -- I'm constantly looking at the price charts that come across
25 my desk. There's a number of sources that provide me with

1 monthly reports.

2 Q Have you looked at demand elasticity in terms of
3 marijuana with respect to monopoly?

4 A I don't know. Not specifically.

5 Q Have you done any analysis relevant to -- what are
6 the relevant factors to determine whether or not a party is
7 exercising monopoly power?

8 A All I know is that there's potentially 90
9 cultivators or cultivation licenses that need an outlet for
10 their product, and if they don't have an outlet, we have a
11 problem.

12 Q Okay. Back to my question, though. What are the
13 relevant factors that someone might look to to determine
14 whether or not an entity is exercising monopoly power?

15 A Basically if an entity gets all the dispensary
16 licenses or as -- you basically can have 10 companies that
17 have all the dispensary licenses and they can grow all their
18 own product, then that's a textbook definition of an
19 oligopoly. They're controlling all of the supply and all of
20 the sales.

21 Q Let's do it one more time. You asked -- you talked
22 about oligopoly. I'm asking about monopoly. What are the
23 factors that someone might consider to determine whether an
24 entity is exercising monopoly power?

25 A I have no additional answer to that.

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

3 THE WITNESS: Thank you.

4 THE COURT: Anybody else of the defendants or the
5 defendants in intervention?

6 Any of the plaintiffs? Mr. Bult.

7 CROSS-EXAMINATION

8 BY MR. BULT:

9 Q Good morning, Mr. Rombough.

10 A Good morning.

11 Q Do you remember the testimony that you gave about
12 your efforts to purchase a license?

13 A Correct.

14 Q And I think your testimony was that you were
15 unsuccessful.

16 A Correct.

17 Q And so is it fair to say that you -- if you were
18 unsuccessful at purchasing one, there were not 25 licenses
19 available?

20 A Yeah, absolutely none.

21 Q Okay. Because you couldn't even find one for sale?

22 A Exactly.

23 Q And you made an effort?

24 A Absolutely.

25 Q Okay. And we went over those efforts; correct?

1 A Correct.

2 MR. BULT: Thank you, Mr. Rombough.

3 THE COURT: Anyone else?

4 Thank you, sir. We appreciate your time.

5 THE WITNESS: Thank you.

6 THE COURT: Have a very nice afternoon.

7 Next witness.

8 MR. GUTIERREZ: Mark Bradley.

9 MARK BRADLEY FELDGREBER, DEFENDANTS' WITNESS, SWORN

10 THE CLERK: Please be seated. Please state and

11 spell your name for the record.

12 THE WITNESS: Mark Bradley Feldgreber, M-A-R-K

13 B-R-A-D-L-E-Y F-E-L-D-G-R-E-B-E-R.

14 THE COURT: Sir, you've already found the water.

15 There's also M&M's in the dispenser. There are a ton of

16 exhibit books around you. Counsel will hopefully show you the

17 exhibits you need to look at on the screen.

18 THE WITNESS: Thank you. M&M's?

19 THE COURT: Yes. They're in the dispensers behind

20 you.

21 THE WITNESS: Thank you.

22 MR. SHEVORSKI: Take advantage, sir.

23 THE COURT: Do not let the lawyers have any.

24 THE WITNESS: Okay.

25 THE COURT: You may proceed.

1 MR. GUTIERREZ: Thank you, Your Honor.

2 DIRECT EXAMINATION

3 BY MR. GUTIERREZ:

4 Q Good morning, Mr. Bradley.

5 A Good morning.

6 Q What is your current position?

7 A CEO of Players Network and Green Leaf Farms.

8 Q And tell us what the difference is between Players
9 Network and Green Leaf Farms.

10 A Players Network is a fully reporting public company,
11 and it is the major ownership of Green Leaf Farms. One's a
12 media company, and one's cannabis.

13 Q When did you begin Green Leaf Farms?

14 A Approximately June 2014 for the application process.

15 Q For the medical application process?

16 A Correct.

17 Q And when did Green Leaf Farms and Players Network --
18 or when did Players Network acquire Green Leaf Farms?

19 A We didn't acquire it. We formed a new corporation
20 for the purpose of getting a cannabis license.

21 Q When was that formed?

22 A Approximately June 2014.

23 Q I'm sorry. My question was with relation to the
24 Players Network. At some point Green Leaf Farms was acquired
25 by Players Network; is that fair?

1 A We didn't acquire it. We started a separate
2 company, and which is a private company.

3 Q And is it publicly traded?

4 A It -- because we're the majority shareholder, it has
5 to operate under all the public rules and regulations, and the
6 revenues are consolidated under the public company.

7 Q So is there SEC filings that have to be made?

8 A Yes.

9 Q And who does that for your company?

10 A Our accountants and our attorneys, myself. We do
11 quarterly reports.

12 Q Was Green Leaf Farms awarded a medical dispensary
13 license in 2014?

14 A No.

15 Q Is it only in the business of cultivation?

16 A I'm sorry?

17 Q Is it only in the business of cultivation?

18 A We have a cultivation and a production license. We
19 have two licenses.

20 Q At some point did Green Leaf Farms and Players
21 Network decide to expand to Argentina?

22 A That's correct.

23 Q And can you tell us about that.

24 A About a year and a half ago I started looking at new
25 markets to expand to and toured several countries and met with

1 several high-ranked officials and partnered with the
2 government of Argentina, the Province of Jujuy. We're the
3 only company in the world that is partners with the government
4 for cannabis that I know of.

5 Q Okay. Partners. Your company is partners with the
6 Argentinean Government; is that correct?

7 A Correct.

8 Q We've been talking a lot in this case the last few
9 months about background checks on owners.

10 A Yes.

11 Q Is it -- do you have an objection as to how the
12 regulations are written for the 5 percent requirement for
13 background checks on owners?

14 A Absolutely not.

15 Q And can you explain why.

16 A I think everybody should have background checks if
17 they're going to have a privilege license. So I don't have
18 any problem with it.

19 Q Can you -- you believe everybody, every owner should
20 be background checked, or do you believe the 5 percent
21 requirement should be in place?

22 A The 5 percent requirement.

23 Q You believe it should be --

24 A 5 percent and above I think -- I agree that the way
25 the law is written should have a background check.

1 Q Okay. That's -- I guess we were unclear on that.
2 So tell us why you believe the law should be -- that
3 background checks should only be for owners 5 percent and
4 above.

5 A I don't really have an answer to that. I'm not --
6 you know, I've really never thought about that.

7 Q Is that something as a publicly traded company would
8 make your business difficult to run if you had to have every
9 single shareholder background checked?

10 A So public companies run by certain sets of rules and
11 regulations, and anybody that owns more than 4.9 percent of a
12 public company by law has to have a different layer of
13 disclosure. And that also goes up again at the 10 percent
14 level. So, you know, we operate for the last 30 years
15 extremely transparent, which -- you know, which is I think
16 vital to any privilege license.

17 Q Okay. So you don't have a objection to the 5
18 percent requirement in the regulations. What objections do
19 you have as to how the regulations were adopted for the 2018
20 marijuana process?

21 A Are you referring to Question 2?

22 Q No. I'm referring to the regulations in NAC 453D
23 that were adopted by the Department of Tax to carry out the
24 provisions of Question 2.

25 A They were completely flawed. They did not comply

1 with Question 2.

2 Q Explain why.

3 A There are several reasons. I'll go just kind of on
4 the high level that I can remember. There's fairness and
5 impartiality that I don't believe was followed. There wasn't
6 a disclosed numerical scoring system prior to the
7 applications. The applications were favoring existing
8 dispensary holders to get more. The applications didn't give
9 the spirit of the Question 2, which was to allow the original
10 dispensary holders and the Nevada residents to keep the money
11 and the taxes here, the advantage to be able to have the
12 priority of getting these licenses. Those are a few off the
13 top of my head.

14 Q Let's start with the last one. I think you said you
15 believe keeping the business here and not having public
16 companies was one of the intents of Question 2. Is that your
17 position?

18 A I didn't say -- well, I didn't say public companies.
19 I said Nevada.

20 Q So you believe it was the intent of the voters that
21 the companies that would operate the marijuana dispensaries
22 would be Nevada-based companies?

23 A The intent of Question 2 was for the people that
24 paid their dues to get the medical license and begin the
25 industry would have the first priority of the dispensaries.

1 The original ownership. That was the spirit of Question 2.

2 Q And do you believe that this statute doesn't reflect
3 that -- is there somewhere in Question 2 that says you need to
4 have a Nevada-based company to obtain a license?

5 A I didn't say Nevada-based company. I said
6 ownership. You scored higher in the medical round when you
7 had Nevada residents as owners. And Nevada companies are also
8 owners.

9 Q You say the applications favored existing
10 dispensaries?

11 A Correct.

12 Q Why do you believe that?

13 A Because under the initial permanent regulations that
14 were adopted gave a higher point-scoring system under
15 experience of operating a dispensary. It clearly says that.
16 So that would make me believe that dispensary owners have an
17 advantage to get more dispensaries.

18 Q So you believe in your application as a cultivator
19 and producer that you were at a disadvantage based on how the
20 application was worded, because you believe it favored
21 dispensaries?

22 A When you got the -- when the final application came
23 out that language changed a little bit, and it didn't refer to
24 specifically dispensary owners, it referred to business
25 experience. They actually changed the language in it. So I

1 can't say that I would be at a disadvantage of being a
2 cultivator in the application process of that one specific
3 thing you're asking for.

4 Q What specific section changed?

5 A I just told you. The specific language changed from
6 the Question 2 that got adopted that says you would get a
7 higher merit system for a dispensary operation experience, and
8 that changed from business experience.

9 Q So you believe somewhere in Question 2 it discusses
10 higher business experience as a factor?

11 A It didn't, no. In the application it was rewarding
12 more for higher business experience. Question 2, the
13 permanent never had anything to do with giving somebody more
14 experience with a dispensary -- giving some more points with a
15 dispensary experience. Question 2 was supposed to be fair and
16 unbiased, and that's not how the application sorted out,
17 though, the permanent regulations that were voted on.

18 Q You said -- one of the other flaws that you stated
19 was disclosure of a numerical scoring system?

20 A Correct.

21 Q Okay. Explain that.

22 A The scoring system was completely flawed. The
23 application clearly gave nine categories that you needed to
24 vote on. When you got your scores it was combined to seven
25 categories. There was no disclosure that we were going to be

1 combining categories together. It would have completely
2 changed the way somebody packaged an application. Of course
3 you want to put parts together that are supposed to go
4 together.

5 There was also areas that, you know, when you saw
6 the scores at the end, were things that unless you knew those
7 are scores you're going to get points for, nobody would have
8 ever known how to do it. So scoring system was completely
9 flawed.

10 Q Okay. Did you ever promise any of your shareholders
11 or investors that you were going to get a dispensary license
12 prior to the application process?

13 A Never promised anything. Always said, we are going
14 to apply for applications and we feel extremely good about our
15 ability to get it based on our experience and our team.

16 Q Who's Kathy Peterson?

17 A One of our minority shareholders.

18 Q Did she file a lawsuit against you and your company?

19 A We are currently in a lawsuit with Kathy Peterson.

20 Q And has she made any allegations of
21 misrepresentation against your company?

22 MR. GENTILE: Objection. Hearsay.

23 THE COURT: Overruled. You can answer.

24 THE WITNESS: Not anything I specifically recall.

25 //

1 BY MR. GUTIERREZ:

2 Q Okay. Has she submitted any affidavits in court
3 with her position on any representations you made about
4 obtaining a dispensary license?

5 A There's been no court --

6 MR. GENTILE: Objection. Hearsay.

7 THE COURT: Overruled. It's yes or no, sir.

8 THE WITNESS: Not that I know of. The answer is no,
9 there has been no court appearances regarding the case.

10 BY MR. GUTIERREZ:

11 Q That's not my question. My question is has she
12 given an affidavit in court talking about a misrepresentation
13 that she believes you made about a dispensary license?

14 MR. GENTILE: Objection. Hearsay.

15 THE WITNESS: Not that I know of.

16 THE COURT: Overruled. It's a yes or no.

17 THE WITNESS: No.

18 MR. GUTIERREZ: Your Honor, I'd like to move to
19 admit Proposed Exhibit 5059, which is an affidavit of Kathy
20 Peterson.

21 THE COURT: How do you get around the hearsay
22 objection?

23 MR. GUTIERREZ: Well, first of all, it's my
24 position --

25 THE COURT: Is the declarant available for cross-

1 examination?

2 MR. GUTIERREZ: I do not know, Your Honor. We could
3 work --

4 THE COURT: Okay.

5 MR. GUTIERREZ: We can attempt to get her available,
6 but, you know, our position is that I think that without the
7 benefit of discovery in this case and without the benefit of
8 -- we've been in an injunction hearing that we do believe that
9 under some Ninth Circuit caselaw that the hearsay requirements
10 are absolute. And I can provide the Court with that caselaw.

11 THE COURT: Anyone else wish to say anything related
12 to the offer of the document?

13 MR. KOCH: I'll say I think hearsay -- the rules for
14 hearsay are relaxed in the context of preliminary junctions.

15 THE COURT: True. Anything else?

16 MR. BULT: Your Honor, we just got a copy of what
17 he's trying to get in. We agree that it is hearsay, and to
18 the extent he wants to call that witness he should, but
19 otherwise it's hearsay.

20 THE COURT: The objection's sustained.

21 Mr. Graf, thank you for joining us today.

22 MR. GRAF: Yes, Your Honor. I apologize. I was in
23 front the of Judge Crockett this morning. Clear River would
24 also request that that document be admitted in that it is a
25 filed document with the court.

1 THE COURT: That doesn't make the declarant credible
2 or available for cross-examination. The objection's
3 sustained.

4 MR. GRAF: Thank you, Your Honor.

5 BY MR. GUTIERREZ:

6 Q Mr. Bradley, were you also sued by Michael Pratter?

7 A No.

8 Q Or was the company sued by Michael Pratter?

9 A Correct. Yes.

10 Q And what was the basis for that lawsuit?

11 A Couple years after he quit he came back and said he
12 was owed money. It was -- we won the case or settled out of
13 court.

14 Q You won the case, or it settled?

15 A It settled in our favor.

16 Q Now, is Michael Pratter a disbarred attorney?

17 A I believe he is.

18 Q And was he helping in your 2014 application?

19 A He worked as an advisor for the company. He was one
20 of -- he wasn't working in a legal capacity. He was one of
21 many people, probably eight people that worked on the
22 application.

23 Q We've talked about diversity in the case, Mr.
24 Bradley. Do you have a position or any objection as to
25 diversity being included as a scoring criteria for the 2018

1 application process?

2 A I don't have any problem with diversity. I have a
3 slightly different definition of diversity. I don't think it
4 is -- I don't believe that it's just male and female, race,
5 gender. I also believe it is diversification in the ownership
6 of the -- who gets applications and who gets the ability to be
7 in this business.

8 Q What does that mean, diversification of ownership?

9 A I think -- I think to create a free market, I think
10 the more people that have owners is going to be better for the
11 public. There's going to be more products available, more
12 prices, more options. I think we're hurting the public by
13 limiting the diversification.

14 Q Okay. But in relation to how the Department scored
15 diversity, do you have any objection to how that was done?

16 A In our particular case we had many more people. I
17 think we had nine or ten people on our application in
18 different management and board capacities. Could have been
19 eleven. I don't remember the exact number. We had quite a
20 bit of diversification on there. Probably five or six people
21 were diversified in there in the definition that you're I
22 think going for, race and gender. Other people that might
23 have had a smaller group, say someone that had three people
24 out of four owners might have scored higher on diversity
25 because three quarters of their ownership was diversified. In

1 our case we had five to six people. We had more
2 diversification, but we got a lower score because it was based
3 on percentage. So I don't really think that was a fair way of
4 assessing it.

5 Q Let me ask you this. With diversity as a scoring
6 criteria do you believe the use of diversity is directly and
7 demonstrably related to the operation of a marijuana
8 establishment?

9 A No, I don't.

10 Q Explain why.

11 A I don't think anyone's color of their skin or gender
12 has anything to do with their experience and knowledge of
13 operating a business. I think that's -- I don't think that's
14 fair.

15 Q And you heard Mr. Zakalik testified earlier,
16 correct, about his position on diversity?

17 A Yes.

18 Q And you disagree with that?

19 A Everybody has their own opinion. I don't -- you
20 know, I can't disagree with what his personal feelings are.

21 Q Okay. Did you attempt to buy a license in any way?

22 A No.

23 Q Would your company buy a license, a dispensary
24 license?

25 A That's a tough question. There's a lot of

1 considerations of going into it, whether there's one
2 available, whether it logically makes business sense for the
3 price, location, whether it comes with a building, whether
4 it's just a license, a lot of different variations of that.
5 But as far as I know there hasn't been any available.

6 Q Have you attempted to buy one?

7 A We haven't attempted to buy one. We have -- I have
8 asked around people in the industry if you know anybody
9 selling one let me know, you know, and I never got any
10 feedback.

11 Q What location -- what jurisdiction would you be
12 looking at for Green Leaf Farms?

13 A The County is our main focus.

14 Q And you applied for six licenses; is that correct?

15 A Correct.

16 Q I think Lyon and Douglas County you also applied in;
17 correct?

18 A Yeah, I did.

19 Q Did you have plans to already open a dispensary out
20 there?

21 A We had a location, we had a letter of intent for the
22 location, we spent money doing the proper research on the
23 market, on the demographics, on traffic and community impact,
24 on the operational budgets. So, yeah, we put efforts into all
25 of our locations with the intention of opening up a location.

1 Q And with respect to Douglas and Lyon County you did
2 research as far as the market out there and the type of
3 success you would have with a dispensary if you were awarded
4 the license?

5 A Yes.

6 Q Tell us about that.

7 A Our company is mainly focused in on the tourist
8 market, rather than local market. So we selected locations
9 that were in main -- off of main freeways or in main tourist
10 corridors or outside the corridors in the legal limits.

11 Q Did you do research as far as the potential market
12 in Douglas County and Lyon County?

13 A To the extent that I just told you, yes. And I've
14 been in Nevada for 30 years, and I've been to both of them.
15 I'm very familiar with the -- you know, the market overall.

16 Q And do you believe those markets would generate --
17 what type of revenue do you think those markets would
18 generate?

19 A I don't know. Your guess is mine. It depends on
20 the other competition, how many other people are open in the
21 area. I don't know.

22 Q Because we're here on an injunction process, what
23 type of harm do you believe your company, Green Leaf Farms, is
24 suffering if this injunction's not granted?

25 A It's not just our company, it's the harm that it's

1 given to the public, the citizens of Nevada for more choices,
2 more diversification. Our company is harmed in the fact that
3 I have a fiduciary obligation to 9,000 shareholders to try to,
4 you know, create as much value as I possibly can. The value
5 is having an outlet for our product. Right now we don't have
6 an outlet for our product.

7 Q Besides having an outlet for your product, is there
8 anything else?

9 A I think there's building the brand, there's a value
10 to that. There is -- you know, there's a lot of different
11 ways to perceive value.

12 MR. GUTIERREZ: Okay. Pass the witness. Thank you,
13 Your Honor.

14 THE COURT: Mr. Koch. And I'm breaking in 14
15 minutes for lunch.

16 DIRECT EXAMINATION

17 BY MR. KOCH:

18 Q Mr. Bradley, you seem like one of the first
19 witnesses who knows a fair amount about the securities
20 industry. Fair to say you're fairly familiar with securities
21 regulations and how securities markets work?

22 A I've been through 106 audits.

23 Q All right. What's the concept of holding stock in
24 street name?

25 A The concept of holding stock in street name, which

1 means an investor will keep it in the name of their brokerage
2 firm, opposed to keeping in their own name, it's called the
3 Obol list [phonetic].

4 Q And of the 9,000 shareholders that your company
5 currently has, how many of those are in street name?

6 A I'd say about 55 percent. It's called C.D. &
7 Company [phonetic].

8 Q And so if you pulled a shareholder list today
9 approximately 55 percent of the shares -- or your
10 shareholders, I should say, would show up as under the street
11 name; is that right?

12 A Correct.

13 Q And that street name might say something like
14 Merrill Lynch or Charles Schwab, something like that?

15 A Yes.

16 Q And Merrill Lynch isn't the actual owner of that
17 stock, are they?

18 A No, it would be a person.

19 Q What would you do to have to find out the name of
20 the person that actually owns the stock in street name with
21 Merrill Lynch?

22 A It's a big complicated process. It can be done by
23 asking everybody to take their shares and put it back in a
24 certificate form.

25 Q But it would be big and complicated?

1 A It can be complicated, correct.

2 Q With respect to the 5 and 10 percent cutoffs you
3 talked about in securities markets, that's something the SEC
4 imposes?

5 A Yes, it's a SEC and FINRA regulation.

6 Q Do you know why they have those thresholds? What's
7 your understanding?

8 A Disclosure.

9 Q And does a 5 or a 10 percent shareholder in your
10 opinion have more ability to affect the operation of the
11 company?

12 A Not in our case.

13 Q In general?

14 A No.

15 Q What about a let's say 51 percent shareholder,
16 right, would have a lot more influence than a 1 percent
17 shareholder; right?

18 A The 51 percent shareholder could replace the board
19 and take control of the company.

20 Q And so the more -- obviously, the more percentage of
21 share ownership you have the more likely you have to have some
22 influence on the direction of the company; is that right?

23 A In theory. But it's no in our case.

24 Q Okay. You did say that you agree the 5 percent
25 threshold that was put in place here, you believe that that

1 was a reasonable threshold of ownership?

2 A Yes.

3 Q Okay. One of the statements that you've made
4 related to the Argentinean Government is that you're
5 partnering with them; is that right?

6 A We are their operator, and we are helping them build
7 an industry in Argentina.

8 Q What does that mean exactly? What's your financial
9 relationship with them?

10 A Our financial relationship is they provided the
11 land, we're providing the operations, and we share a piece of
12 the net profit.

13 Q So you each -- each of you -- your company and the
14 Argentinean Government split profits or have some profit
15 split; right?

16 A Yes. And it's very early stage in this
17 relationship, so there is no profit yet.

18 Q And the Argentinean Government, then, they have what
19 would amount to an equity interest in the company?

20 A No, they have no equity interest in us.

21 Q The profit split is just assignment of profits?

22 A It's in lieu of taxes. They would like to -- they
23 would like us to be successful, and they're willing to share
24 profits. Instead of taxing us in the front end, they're
25 willing to -- they want to participate on the back end.

1 Q Does the Argentinean Government own any shares of
2 your company?

3 A Not that I know of.

4 Q Do you know if a background check has been performed
5 on the Argentinean Government with respect to its partnership
6 with your company?

7 A No, not that I know of. I haven't done one. And
8 it's not a partnership.

9 Q Okay. It's a financial arrangement you have with
10 Argentina to split profits. Is that how you describe it?

11 A We're a contractor for them.

12 Q Okay. Could you perform a background check on the
13 Argentinean Government?

14 A The people that we're doing business with, the
15 particular province, I think that's already been done. Its
16 very -- it's a whole political environment, and anything that
17 would be negative we would already know about.

18 Q Because you would have looked into that, done your
19 due diligence on that?

20 A We've done our due diligence. We made sure we
21 weren't walking into something we didn't think was a good
22 opportunity.

23 Q Of the 9,000 shareholders that's -- you're saying
24 the number, 55 percent of the 9,000 are held in street name is
25 that right?

1 A Approximately.

2 Q Okay. Do you know of the 9,000 shareholders how
3 many of those have had background checks conducted by the
4 Department of Taxation in Nevada?

5 A I don't think any of them have. I do want to
6 clarify. We have to be notified by law by the brokerage firms
7 of fiduciaries if someone has more than 4.9 percent. They
8 have to file -- they have to file what's called a form -- I
9 think it's called a G-12 or something. I'm not -- I can't
10 remember the exact name.

11 Q I think you're right.

12 A But they have to file a form.

13 Q Right.

14 A So if someone files a form, we're notified. But the
15 answer is we have not been notified by anyone that owns more
16 than 4.9 percent.

17 Q And of the owners -- shareholders that own less than
18 -- 4.9 percent or less, are you aware of any background checks
19 that have been conducted by the Department of Taxation for
20 those shareholders?

21 A I'm not aware of the Department of Taxation doing
22 the background check on anybody.

23 Q Have they done a background check on you?

24 A I don't know.

25 Q Have you given fingerprints?

1 A Yes.

2 Q What did you think those fingerprints were going to
3 be used for?

4 A To see if I had a criminal background.

5 Q What about those other shareholders you talked
6 about? Have they given fingerprints to the Department?

7 A I suppose if the Department -- I don't know anything
8 in the rules and regulations saying that someone that doesn't
9 have an agent card and is not a direct owner of the company
10 even needs fingerprints.

11 Q Because an agent card would mean you're working in
12 the business; right?

13 A Yeah, you're walking in the facility.

14 Q And an agent, even if they have let's say .1 percent
15 ownership, they need to have a background check; right?

16 A If they're working in the facility, yes.

17 Q Right. All right. Do you think you could have
18 background checks performed on every shareholder of your
19 company every time a share changes hands?

20 A I think it's an impossibility.

21 Q All right. Last question. What place did your
22 company come in with the rankings in the County and in Las
23 Vegas? Do you know?

24 A I don't remember the exact ranking. I do remember
25 our scores range from 139 to 149.

1 Q All right. And the scores that received licenses,
2 the bottom cutoff in the City of Las Vegas and the County were
3 approximately 210?

4 A The ones that got --

5 Q Right.

6 A I don't know.

7 Q Sound right that Green Leaf was eighty-third in the
8 County, eighty-first in Las Vegas?

9 A I have no idea.

10 MR. KOCH: No further questions.

11 THE COURT: Anyone else on the defendants,
12 defendants intervention?

13 MR. SHEVORSKI: No, Your Honor.

14 THE COURT: Plaintiffs?

15 MR. BULT: No, Your Honor.

16 THE COURT: Thank you, sir. We appreciate your
17 time. Have a nice afternoon. Does that conclude my witnesses
18 for the day?

19 MR. GUTIERREZ: Yes, Your Honor.

20 THE COURT: All right. So here's what I have a
21 concern about.

22 Thank you, sir.

23 THE WITNESS: You're welcome. Thank you.

24 THE COURT: I am concerned about waiting for Mr.
25 Gentile's rebuttal witness until August.

1 So, Mr. Gentile, tell me what you think your
2 proffered expert might add to the information I have heard as
3 part of these proceedings.

4 MR. GENTILE: Well, my expert is going to focus on
5 valuation, because that has been beat around with regard to
6 the question of irreparable harm. And I will tell the Court
7 -- and I do not mean to presuppose how this Court will rule,
8 but I suppose multiple ways, one of which would be to issue
9 the preliminary injunction. And if you do that, you're going
10 to be asked to set a bond. And the method of evaluating a
11 cannabis business is going to be -- in addition to where it is
12 now with regard to the issue of irreparable harm, is going to
13 be before you. And so my expert will testify in the following
14 specific -- well, general areas. Let me put it that way.

15 Approaches and methods to the evaluation of a
16 cannabis business; the evaluation of a startup and pre-revenue
17 cannabis business, which these all are because none of them
18 have opened; how to interpret a valuation report; and unique
19 issues with regard to evaluating a cannabis business such as
20 the Controlled Substances Act, the federal legislation;
21 Section 280(e) of the Internal Revenue Regs; the banking
22 situation and how that impacts the valuation; and the impact
23 that's being made on the industry as a whole because of
24 California and the increase in production in what it is for
25 the most part -- and I know we're focusing on Nevada -- a

1 market that is pretty much a fixed market.

2 THE COURT: Okay. So you said you had gotten some
3 dates. Tell me what those dates are.

4 MR. GENTILE: August 1st. I don't know if you're
5 available that day.

6 THE COURT: I am, because Mr. Koch's partner vacated
7 his preliminary injunction hearing witness that day.

8 MR. GENTILE: All right. Well, he's available
9 August 1st.

10 THE COURT: So is everyone else available on --
11 Mr. Kahn said he was not --

12 MR. KAHN: Yeah, I was out till August 5th, Your
13 Honor. I'm sorry.

14 MR. KOCH: On that issue, though, I would offer --
15 it sounds like what he's talking about sort of relates to the
16 calculation of a bond and not the actual determination of
17 whether an injunction is appropriate.

18 THE COURT: So if everyone is willing to stipulate
19 to do the bond hearing separately after I make a determination
20 on the injunctive relief portion, I would be happy to hear the
21 witness after I issue the decision, and then we wouldn't be in
22 this situation, I'd only be looking for a date to do closing
23 arguments.

24 MR. GENTILE: Well, let me give you some additional
25 dates that he's available.

1 THE COURT: Hold on. I'm trying to get --

2 MR. GENTILE: Okay.

3 THE COURT: -- a stipulation first. I have no
4 stipulation of such. I was waiting for somebody to say so
5 stipulate, got none of it.

6 MR. KEMP: Yeah, Judge. We think that would be a
7 good idea. We'd stipulate to that.

8 THE COURT: Yeah, but you're on the same side as Mr.
9 Gentile. So I was looking on the other side of the room.

10 MR. KEMP: Oh. Well --

11 MR. GUTIERREZ: And, Your Honor, we were operating
12 under that premise that we thought any testimony on the bond
13 would be done after. So we would stipulate, as well.

14 THE COURT: So I've got one stipulation.

15 MR. HONE: Stipulate.

16 MS. SHELL: Stipulate, Your Honor.

17 THE COURT: All right. So the defendants and
18 defendants in intervention have stipulated that what you are
19 describing is a bond issue that could be handled after I make
20 a determination.

21 MR. GENTILE: I think it's both. That's my concern.
22 My concern is with regard to irreparable harm, but --

23 THE COURT: I don't think it's an irreparable harm
24 issue, Mr. Gentile. I have heard sufficient testimony related
25 to the limited availability of marketable licenses in the

1 industry from the witnesses we've heard from. I understand
2 how limited that marketability is. There may be a value issue
3 imposed upon that impacts the bond, but I don't think it goes
4 to the irreparable harm as much as maybe others do.

5 MR. GENTILE: Well, rule number one prevails. But
6 what I would suggest, then, is that we at least look at these
7 other dates so that you can --

8 THE COURT: Well, hold on. First I want to set
9 closing arguments. When can I do closings, tomorrow? How do
10 you guys feel about tomorrow? Tomorrow's a great day.

11 MR. GENTILE: Judge, please.

12 THE COURT: Mr. Gentile said no. Okay. So tomorrow
13 doesn't work for you.

14 MR. KOCH: Next week?

15 MR. GENTILE: Your Honor --

16 THE COURT: How about next week?

17 MR. GENTILE: Well, that's my concern. I have
18 cancelled two trips this summer.

19 THE COURT: I'm sorry.

20 MR. GENTILE: But I did it without -- but this is
21 it. I can't cancel it any further. I can -- if we do it next
22 Friday, I can make it.

23 THE COURT: That'd be July 26.

24 MS. SHELL: I'm out of the jurisdiction on Friday,
25 Your Honor.

1 MR. BULT: So am I, Your Honor.
2 THE COURT: So what about tomorrow?
3 MR. PARKER: I can't do tomorrow.
4 MR. GENTILE: I'm leaving tomorrow.
5 THE COURT: Oh. You're leaving tomorrow?
6 MR. GENTILE: Yeah.
7 THE COURT: When do you get back?
8 MR. GENTILE: I will probably get back Wednesday
9 night.
10 THE COURT: What about Thursday?
11 MR. GENTILE: I suppose I could do it Thursday.
12 MR. BULT: Thursday the 25th is -- I'm out.
13 MR. KOCH: We're here on Monday for the summary
14 judgment hearing. Would you guys like to come --
15 THE COURT: Not everyone's here, I guess. Mr.
16 Gentile's going to be out of the jurisdiction.
17 MR. KOCH: Oh. You're out, Dominic.
18 MR. GENTILE: I take it "we" excluded me? That's
19 the second time in a couple of days. So it's not a problem.
20 THE COURT: Okay, guys. So it sounds like you don't
21 have the issues -- when's your expert available after August
22 1st? I can't give you any dates after --
23 MR. GENTILE: 7th?
24 THE COURT: Yeah, I can't help you.
25 MR. GENTILE: 7th, 9th, and 12th.

1 THE COURT: Can't help you. Got a new stack
2 starting the 2nd, on August 2. that's the only flexibility I
3 have. The other possibility will start after the calendar
4 calls on July 30th.

5 MR. GENTILE: Well, then August 1st if he's
6 available.

7 THE COURT: But I've got issues of other people not
8 being available. Okay. I guess I'll see you guys on Monday
9 to argue the motions. I don't have any other availability. I
10 can guarantee --

11 MR. GENTILE: Mr. Saverese is going to argue the
12 motions on behalf of our client.

13 THE COURT: That's fine. But I do not have time --
14 if I have an issue with availability among you all through
15 August 2nd, I can't give you a date until after my calendar
16 calls on July 30th.

17 MR. KOCH: Can we get, like we did last time, maybe
18 just available dates from the Court and we can by email
19 converse --

20 THE COURT: You all can get all the available dates
21 you want.

22 MR. KOCH: -- and try to get that --

23 MR. KAHN: Your Honor, we were approached by Mr.
24 Rulis to move the motion hearing on Monday due to a scheduling
25 issue. I don't know if you have availability on Tuesday

1 afternoon. I think that's when Mr. Rulis said he could be
2 available. We would be available. Otherwise I'm going to
3 have problems.

4 THE COURT: If you can confine your arguments to an
5 hour or less, I can have you come on the 23rd at 1:00 o'clock,
6 but I have mental health court that starts at 2:00, and they
7 usually try and set up at 1:45.

8 MR. GRAF: I'm available on Tuesday, Your Honor.

9 THE COURT: Can you do the argument in a half hour,
10 guys, half hour, 40 minutes?

11 MR. GENTILE: Is this summary judgment, not closing
12 argument?

13 THE COURT: No.

14 MR. KOCH: Right. Summary judgments.

15 MR. GENTILE: Okay.

16 THE COURT: The motion. Everybody okay moving the
17 motion to 1:00 o'clock on Tuesday, understanding you've got to
18 be done by 1:45 so the jail can bring the inmates for Mental
19 Health Court. Great. See you then.

20 MR. CRISTALLI: Your Honor, one issue is that there
21 is a motion to dissolve the bond that we previously addressed.
22 I think it's scheduled right now for August 15th in chambers.
23 I don't know if Your Honor wants to address that at the time
24 of our motion hearing or whether or not --

25 THE COURT: No. If Mr. Graf wants it heard in open

1 court, he'll ask.

2 MR. GRAF: We're going to file an opposition, Your
3 Honor.

4 THE COURT: Mr. Gutierrez, you need to give Dulce a
5 copy of the declaration or affidavit that you wanted to use
6 when I sustained the objection so she has it for purposes of
7 the record. Anything else? Bye.

8 (Court recessed at 11:47 a.m., until
9 a date and time to be determined)

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EXHIBITS

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PLAINTIFFS' EXHIBIT NO.

NONE ADMITTED

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DEFENDANTS' EXHIBIT NO.

NONE ADMITTED

* * *

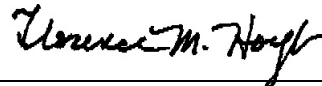
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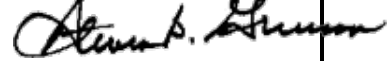
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DATE



TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

SERENITY WELLNESS CENTER LLC,)
et al.,)

Plaintiffs,)

vs.)

STATE OF NEVADA DEPARTMENT OF)
TAXATION,)

Defendant.)

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

**TRANSCRIPT OF
PROCEEDINGS**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

TUESDAY, AUGUST, 13, 2019

EVIDENTIARY HEARING - DAY 17

VOLUME I OF II

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

APPEARANCES:

FOR THE PLAINTIFFS:

DOMINIC P. GENTILE, ESQ.
MICHAEL V. CRISTALLI, ESQ.
ROSS J. MILLER, ESQ.
WILLIAM S. KEMP, ESQ.
NATHANAEL R. RULIS, ESQ.
MAXIMILIEN D. FETAZ, ESQ.
THEODORE PARKER, III, ESQ.
ADAM K. BULT, ESQ.

FOR THE DEFENDANT:

KETAN D. BHIRUD, ESQ.
STEVEN G. SHEVORSKI, ESQ.
BRIGID M. HIGGINS, ESQ.
ALINA SHELL, ESQ.
JARED KAHN, ESQ.
J. RUSTY GRAF, ESQ.
ERIC D. HONE, ESQ.
JOSEPH A. GUTIERREZ, ESQ.
PHILIP M. HYMANSON, ESQ.
BRODY R. WIGHT, ESQ.
TODD L. BICE, ESQ.
DENNIS M. PRINCE, ESQ.

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LAS VEGAS, CLARK COUNTY, NEVADA, AUGUST 13, 2019, 9:22 A.M.

*** * * * ***

MR. GUTIERREZ: Yes, Your Honor. We're going to call Shane Terry first.

THE COURT: Okay.

MR. GUTIERREZ: After Mr. Terry, we're going to have Phillip Peckman on behalf of Thrive.

THE COURT: Okay.

MR. GUTIERREZ: And after Mr. Peckman, I'll have Alex Yemenidjian on behalf of Essence.

THE COURT: Okay.

MR. GUTIERREZ: And that's all our witnesses, Your Honor.

THE COURT: So you've got three.

MR. GUTIERREZ: Yes.

THE COURT: And then after that will you be done?

MR. GUTIERREZ: We'll be done after that, Your Honor.

THE COURT: Do any of the other defendants in intervention plan on calling any witnesses today? Because we're trying to wrap up all of the evidence today.

Okay. Is there going to be a rebuttal case other than the issue I've talked about with Mr. Gentile on the bond.

MR. GENTILE: That depends on what the testimony is.

THE COURT: I understand. But right now do you think you're going to have a rebuttal case?

1 MR. GENTILE: As of right now, no.

2 THE COURT: Okay.

3 MR. CRISTALLI: And, Your Honor, with regard to
4 Mr. Terry, I know he's not an intervenor in this case. I know
5 that he is an applicant. We do not have his application. We
6 have not had an opportunity to review it even in a redacted
7 form. I think we should have an opportunity if he's going to
8 get up and testify as it relates to these proceedings, and we
9 would like that chance to be able to understand the ownership
10 structure of his company. Unless --

11 THE COURT: What's the name of his company?

12 MR. CRISTALLI: I believe it's TapRoots, and the
13 applicant name I believe is Grassroots, but I may be wrong on
14 that.

15 UNIDENTIFIED SPEAKER: That would be -- it's TapRoot.

16 MR. CRISTALLI: Well, the applicant --

17 THE COURT: So it's not NuVeda any more?

18 MR. RULIS: The LLC is --

19 No. It's TR --

20 THE COURT: Because they were here yesterday, and
21 they told me he had sold.

22 MR. RULIS: Okay. It is not NuVeda any more. It is
23 TRNV -- TRNVP098, LLC.

24 THE COURT: So does anyone have his application so
25 someone can ask him if it's okay to look at it?

1 (No audible response)

2 THE COURT: It's a yes or no.

3 UNIDENTIFIED SPEAKER: I don't know.

4 THE COURT: So I'm guessing nobody has it. All
5 right. That will be a slight delay.

6 Mr. Gutierrez, I've got to work that out before he
7 takes the stand.

8 MR. GUTIERREZ: I understand.

9 THE COURT: So are you going to --

10 MR. GUTIERREZ: I don't know that his application --

11 THE COURT: Are you going to are you going to
12 caucus --

13 MR. GUTIERREZ: -- has been produced.

14 THE COURT: That's why we're having a discussion.

15 MR. GUTIERREZ: Yeah. I think it was just the
16 parties.

17 THE COURT: So that's why we're having the
18 discussion. It needs to be made available in some form or
19 other. And so I need you all to caucus, perhaps with
20 Mr. Terry, because he's the one who will have to give some
21 consent related to that before we go forward.

22 So you guys do that while I'm sitting here waiting.

23 MR. GUTIERREZ: Do we have the -- does the State have
24 the unredacted version?

25 MR. BHIRUD: Not on me, probably back in my office.

1 MR. GUTIERREZ: Yes.

2 THE COURT: That would be at Washington and Las Vegas
3 Boulevard.

4 MR. BHIRUD: Yeah.

5 MR. CRISTALLI: And I'm assuming we're going to have
6 a redaction issue on top of that.

7 THE COURT: I don't know, Mr. Cristalli. I've got
8 multiple steps to go through.

9 (Pause in the proceedings.)

10 THE COURT: Did you have an opportunity --

11 MR. GUTIERREZ: Your Honor, Mr. Terry is getting the
12 application. I think what we would agree to is to produce the
13 same unredacted portions that have been produced by the
14 intervening defendants.

15 THE COURT: Okay.

16 MR. GUTIERREZ: He's going to email it to us that we
17 can get those portions over so maybe we can start with
18 Mr. Peckman first.

19 THE COURT: Okay.

20 MR. GUTIERREZ: And then see if we can get that
21 straightened out if that works.

22 THE COURT: Is that agreeable to everyone?

23 MR. GENTILE: Yes, Your Honor.

24 THE COURT: All right. That'll be the plan. Thank
25 you. Good solution, gentlemen.

1 So I'm still missing Mr. Khan, and since I'm four
2 minutes early, I can't start until at least 9:30.

3 (Pause in the proceedings.)

4 (Proceedings recessed at 9:27 a.m., until 9:32 a.m.)

5 THE COURT: All right. Mr. Gutierrez, are you ready
6 to start?

7 MR. GUTIERREZ: We're ready, Your Honor. We're going
8 to start with Mr. Peckman.

9 THE COURT: Perfect timing, Mr. Khan.

10 MR. KAHN: Thank you, Your Honor. Glad I'm not late,
11 but --

12 (Pause in the proceedings.)

13 THE COURT: Your next witness.

14 MR. GUTIERREZ: Your Honor, we call Phillip Peckman.

15 THE COURT: Mr. Peckman, if you'd come forward,
16 please.

17 **PHILLIP PECKMAN**

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

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

22 THE WITNESS: Phillip Craig Peckman. P-e-c-k-m-a-n.

23 THE COURT: Good morning, Mr. Peckman. You've been
24 here for several days. You can sit down. There are M&Ms in
25 the dispensers. There are more binders than you -- than you

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1 could possibly imagine, and there's water in the pitcher. If
2 you need a break at any time, you let us know.

3 THE WITNESS: I may have to stand up on occasion
4 because of my sore back.

5 THE COURT: Please, please feel free to stand up if
6 you need to.

7 THE WITNESS: If that's okay.

8 THE COURT: And if your voice drops or you get too
9 far from the mic, we will remind you to keep your voice up.

10 THE WITNESS: This is it right here.

11 THE COURT: Okay. But if you need to stand up, you
12 just do so, sir. And if you need a break, let us know.

13 You may proceed, Counsel.

14 MR. GUTIERREZ: Thank you, Your Honor.

15 DIRECT EXAMINATION

16 BY MR. GUTIERREZ:

17 Q Good morning, Mr. Peckman. Could you give us an
18 overview of your educational background.

19 A I'm from Iowa. I went to school at Creighton
20 University in Omaha, Nebraska. I have degrees in economics,
21 political science and accounting. I also went to University of
22 Iowa. I went to Drake Law School. I passed the bar in Iowa,
23 and I practiced law in Iowa before I moved here.

24 Q And just give us an overview of your work experience
25 after law school.

1 A After law school I practiced law. I was inclined to
2 like tax. I joined a national accounting firm called McGladrey
3 and Poland. I moved out here in 1980 where I became managing
4 partner of that firm here, and I was there, and my whole
5 experience with McGladrey was 16 years.

6 In 1990, I left McGladrey and Poland, and I joined a
7 company here called Greenspun, and, the Greenspun Corporation,
8 I joined them as the COO in 1990. I left as a CEO 16 years
9 later.

10 Q And tell us, what's your current involvement with the
11 marijuana industry?

12 A I'm one of the owners of a company called Thrive.

13 Q Do you have any other roles in addition to owners?

14 A I am one of the -- I am the advisory manager. I have
15 emphasis not in operations, but in the political side,
16 lobbying, raising money, accounting, taxation, acquisition,
17 things like that.

18 Q So those are some of the duties you perform --

19 A Yes.

20 Q -- as part of that role?

21 A Yes.

22 Q Okay. And how did you get involved with Thrive?

23 A Years ago, probably 2013, when the medical licenses
24 were coming on board, several of us talked about it, and so a
25 group of us made applications for licenses.

1 Q Okay. And who else is involved with the ownership of
2 Thrive?

3 A There's seven of us: Mitch Britten is our CEO and
4 one of the major owners; Nick Mamula, local resident; Julie
5 Murray; David Brown; myself; and Tom Hallback [phonetic].

6 Q Is Ed Findlay and owner as well?

7 A Oh, yeah. I'm sorry. Ed Findlay, yes, he's an owner
8 too.

9 Q Are you aware of the ownership structure of Thrive?

10 A Yes.

11 Q Okay. And it's my understanding there's a holding
12 company; is it CPCM Holdings LLC?

13 A Yes, there is.

14 Q And can you describe the ownership structure for us
15 from a -- for the LLCs.

16 A The owners own their interest in CPCM, and there are
17 three companies below that, all of them have licenses. One is
18 MB which is basically Mitch Britten [indiscernible] grow.

19 The other one is Commerce. That has a Springfield
20 license.

21 The other one is Cheyenne. That has a dispensary
22 license.

23 And they've been around since 2014.

24 Q Okay. So Cheyenne Medical LLC is a separate LLC with
25 its own medical marijuana license; is that correct?

1 A Yes.

2 Q And then Commerce Park Medical LLC has its own
3 license as well; is that correct?

4 A Yes.

5 Q And you said they were formed in what year?

6 A 2014.

7 Q Okay. There's been a suggestion in this Court that
8 Thrive created these LLCs, Commerce Park Medical and Cheyenne
9 Park specifically to apply for the 2018 process. Is that true?

10 A No. They been around since 2014.

11 Q Okay. So they're not newly created entities? Is
12 that fair to say?

13 A No, they're not.

14 Q Now, during the 2018 application process, did Thrive
15 apply for licenses under Commerce Park LLC and Cheyenne Medical
16 LLC?

17 A Yes.

18 Q Okay. Now, are you aware of any statute or
19 regulation that says an entity can only apply for one license
20 per jurisdiction?

21 A No.

22 Q Are you aware of other companies, including companies
23 on the plaintiffs' side had used separate LLCs to file multiple
24 applications in the same jurisdiction?

25 A Yes.

1 MR. GENTILE: Objection to foundation.

2 THE COURT: Overruled.

3 BY MR. GUTIERREZ:

4 Q Would Tryke be one of those companies?

5 A Yes.

6 Q Okay. And NuVeda as well?

7 A NuVeda, yes.

8 Q Now, Mr. Peckman, you said you did lobby on behalf of
9 the company for Thrive; is that fair?

10 A Yes.

11 Q Okay. Are you aware of the 2016 ballot initiative?

12 A Yes.

13 Q I want to ask you a few questions about it. So we
14 can turn to NRS 453D.020 -- or -020. Now, this should come up
15 on your screen, but --

16 (Pause in the proceedings.)

17 THE COURT: And, sir, if you want to look at the real
18 book too, you can if that's helpful.

19 MR. GUTIERREZ: Your Honor, do we have the book for
20 him?

21 THE COURT: I do.

22 MR. GUTIERREZ: Thank you.

23 THE COURT: At least I think I do.

24 (Pause in the proceedings.)

25 THE COURT: Sir, I apologize. This is an entire

1 replacement volume. There's no pocket part anymore. So
2 hopefully that one will work.

3 BY MR. GUTIERREZ:

4 Q All right. Mr. Peckman, if you could turn to
5 453D.020.

6 A Okay.

7 Q Let me know when you have that in front of you.

8 THE COURT: Wait, sir. I think I gave you the wrong
9 book. That's 433. And it is still in the pocket part which is
10 the very back with those little looseleaf --

11 THE WITNESS: A, B, C. These go A, B, C.

12 I have 453D here. I have --

13 THE COURT: So that book, the whole -- go all the way
14 to the back.

15 THE WITNESS: Oh, thank you. A, B, C --

16 THE COURT: Keep going. There's a looseleaf thing
17 stuck in the back.

18 THE WITNESS: Oh, back here. I'm sorry about that.

19 THE COURT: It's okay. It's a lawyer thing called a
20 pocket part.

21 THE WITNESS: Yes, I have it.

22 MR. GUTIERREZ: Okay. Excellent.

23 BY MR. GUTIERREZ:

24 Q Now, Mr. Peckman, what's your understanding of what
25 the intent is of the ballot initiative for 2016?

1 A It was on the ballot to have a vote of the people to
2 determine whether or not Nevada should have recreational
3 marijuana.

4 Q Is one of the intent to generate taxable revenue for
5 the State, specifically for public education?

6 A Yes.

7 Q Okay. And are you aware that the State eventually
8 moved forward with adopting regulations, permanent regulations
9 for recreational marijuana?

10 A Yes.

11 Q Okay. And just if you could go down to 453D.200.

12 A Are you going to put that on the screen also?

13 Q Yes.

14 A Okay.

15 Q And then we talked about this a lot, and I know
16 you've been in court, but you see the language that says,

17 The department shall adopt all
18 regulations necessary or convenient to carry
19 out the provisions of this chapter.

20 Have you seen that before?

21 A Yes, I have.

22 Q And what was your understanding as to what that
23 meant?

24 A That the State agency is responsible for getting
25 ready to implement recreational marijuana, and so they have an

1 obligation to put things in procedure so we can -- so we can
2 apply for applications and open.

3 Q The very next sentence, if you read down, it talks
4 about,

5 The regulations must not prohibit the
6 operation of marijuana establishments, either
7 expressly or through regulations, that make
8 their operation unreasonably impracticable.

9 And we've talked about that. Have you seen that
10 language?

11 A I have.

12 Q And as someone who owns a marijuana establishment,
13 can you tell us what would be unreasonably impracticable, like
14 what type of regulations could cause a burden on your company.

15 A In the application process or --

16 Q During the application process.

17 A Well, it doesn't really apply to us, but background
18 checks on all owners would be impossible, especially for large
19 public companies.

20 Q And tell us about that. If there's an imposition to
21 do background checks on every single minority-level shareholder
22 of a company, you believe that can cause a burden on a company?

23 A For larger companies it would. I mean, our company
24 is small. We have seven owners, and we have one at 1 and a
25 half percent. And all of our owners, including the small one,

1 had background checks on -- I've heard most of the testimony
2 for a large company, and it's hard to find out who the actual
3 owners are, either directly or beneficial owners.

4 Q Okay.

5 A And when you buy a piece of stock in a company, it's
6 held usually in a street name. So you buy it, and your account
7 said Merrill, and Merrill was the owner.

8 If you're the beneficial owner, you have to contact
9 Merrill to find out that I'm an owner.

10 If you're part of a mutual fund, they're the owner.
11 A mutual fund might have 200,000 beneficial owners of that
12 fund. You'd have to contact them to see if they would give you
13 the names of all of them. It's also possible a mutual fund can
14 own a mutual fund. So you'd have another 3- or 4,000 people.

15 Plus, ownership changes daily. So one day you might
16 have, if you could get to all those people, it could be
17 hundreds of thousands or maybe even a billion. If you could
18 get all those people, they would change the next day. They
19 would change the next day.

20 So there's also an ongoing process that the State
21 has, you know, to review ownership, and they can do that
22 whenever they want to.

23 Q You said something. You said that it wouldn't apply
24 to Thrive. Can you explain that more. You said earlier Thrive
25 had seven owners?

1 A We have seven owners.

2 Q Okay. And did Thrive have any owners with less than
3 5 percent ownership interest?

4 A Yes. Julie Murray.

5 Q Okay. And did Thrive have all of its owners
6 background checked for the 2018 application process?

7 A We did.

8 MR. GUTIERREZ: At this time, Your Honor, I'd like to
9 move to admit Proposed Exhibit 5062, which is a portion of
10 Thrive's application that contains Attachment B, which is the
11 owner, officer and board member attestation form.

12 THE COURT: Any objections?

13 MR. KEMP: No objection, Your Honor.

14 THE COURT: Be admitted.

15 (Defense Exhibit Number 5062 admitted)

16 THE COURT: And does Mr. Peckman have a copy?

17 MR. GUTIERREZ: May I approach?

18 THE COURT: You may.

19 BY MR. GUTIERREZ:

20 Q Mr. Peckman, have you seen this portion of Thrive's
21 application before?

22 A I have.

23 Q Okay. And on this first page, can you tell us what
24 that is.

25 A That's called the member attestation form.

1 Q And Mitch Britten is one of the owners of Thrive?

2 A He is.

3 Q So Mitch Britten signed prior on August 21st, 2018,
4 consenting to a background check; is that correct?

5 A Yes.

6 Q If you go to the next page, David Brown, is he also
7 an owner of Thrive?

8 A He is.

9 Q And did he sign agreeing for a background check?

10 A Yes.

11 Q Can you go to the next page.

12 Edward Findlay, is he also an owner of Thrive?

13 A He is.

14 Q And he agreed to a background check --

15 A He did.

16 Q -- it looks like on August 20th, 2018; is that
17 correct?

18 A Yes.

19 Q Thomas Hallback, the next page, is also an owner; is
20 that correct?

21 A Yes.

22 Q And he agreed to a background check?

23 A He did.

24 Q And the next one is Nickolas Mamula, and he agreed to
25 the background check as well?

1 A He did.

2 Q And finally, the last was Julie Murray. Did she
3 agree to have a background check?

4 A She did.

5 Q And Julie has less than a 5 percent ownership
6 interest; is that --

7 A She does.

8 Q -- in Thrive; is that correct?

9 A She does.

10 Q Okay. Hypothetically, if it was --

11 THE COURT: There are M&Ms in the trucks?

12 BY MR. GUTIERREZ:

13 Q Hypothetically, if there was a ruling that the
14 background checks were required for everybody with less than
15 5 percent ownership interest, would Thrive have complied with
16 that portion?

17 A Yes, we would.

18 Q Okay. I want to turn your attention to the
19 severability clause in the initiative which is at 453D.600.

20 A -600?

21 Q Yes. It should be on your screen as well.

22 A Yes.

23 Q Have you seen this provision in the ballot initiative
24 before?

25 A Yes.

1 Q Okay. Tell us what it is.

2 A That's pretty standard language. I'm not sure in
3 every initiative, but in most contracts, things like that,
4 there's a severability clause. You know, for some reason, you
5 know, if someone is -- if something is not enforceable or it
6 violates the Constitution or something like that, and the rest
7 of the either contract or something like this, the initiative,
8 is you can implement it without that provision. Then you -- a
9 provision you don't use.

10 Q So taking the intent of the ballot initiative, which
11 is to have recreational use marijuana, would there be a way to
12 sever a portion of the statute that would -- if it was found to
13 be unconstitutional?

14 MR. GENTILE: Objection. Calls for a legal
15 conclusion.

16 THE COURT: Overruled.

17 THE WITNESS: Of course, you could. If something was
18 just impossible to do, the overall intent of the initiative is
19 still able to be carried out, just like it basically says in
20 here, then you would do that because that would be the overall
21 intent of the initiative is to implement recreational marijuana
22 in the State.

23 BY MR. GUTIERREZ:

24 Q Now, Mr. Peckman, were you -- did you do any
25 lobbying, or did you speak on behalf of Thrive at all for any

1 of the -- during the adoption period of the permanent
2 regulations in 2018?

3 A No, I did not. We have lobbyists and lawyers that
4 participated mostly, plus various organizations in the State
5 that did that. Plus all the many of the owners, plaintiffs and
6 intervenors, all had many of them that were involved. Of
7 course, we talk all the time. The industry is small and pretty
8 close. So we all know what's going on.

9 Q So did the industry had the ability to weigh in on
10 the adoption of the permanent regulations?

11 A It had the ability and obligation obviously, and the
12 department of tax, or really any government agency before they
13 can adopt any kind of regulations, they have public hearings,
14 public input. We had workshops, and we give input to what the
15 industry says, you know.

16 Q Are you familiar with how regulations work in
17 general?

18 A Absolutely. I used to lobby on behalf of the
19 Greenspun Corporation.

20 Q Okay. Can you tell us in general how regulations are
21 adopted.

22 A It's pretty standard for every agency, and so I'll
23 just give you kind of a generality. There's obligation to have
24 all these public hearings, which they do, and an obligation for
25 these workshops, which they do. They ask people what they

1 think, not only people in the industry, but people outside the
2 industry that have concerns about whether this lab testing or
3 packaging or advertising, you know, or locations, you know,
4 where they would be better served, you know, close to this and
5 close to that. So there's all kinds of input.

6 Within the department in general they prepare some
7 kind of a draft. Obviously here they had some old regulations
8 in the medical, and they somewhat go off those because that
9 really was the intent here is to not upset medical the best you
10 can. So they prepared draft, the department, and, you know,
11 the department as part of the executive branch, obviously, and
12 so they're represented by the Attorney General. So the
13 Attorney General has one or two staff lawyers there that in
14 general would participate in the drafting of the regulations to
15 make sure they comply.

16 The executive branch, they have an obligation to
17 submit those to the legislative branch, you know, which they
18 do. After that particular process, they go to the LCB, which
19 LCB basically approves all language for laws and regulations.
20 So they send up a draft. It might be called the P draft or
21 proposed draft, something like that, and it goes to that
22 agency. They put all the numbers on it, and code sections or
23 administrative code section, things like that, and they look at
24 whether it complies -- in this case, they would look whether it
25 complied with the initiative and, or -- and/or whether it was

1 constitutional. But they do that every time they pass a law.
2 Every state agency does the same thing. So they take a look at
3 that, and then they say, hey, this works. That doesn't work.
4 You can't do that, whatever.

5 They send that back, and the department will take a
6 look at that and go, well, we can't do that. So they chat.
7 They might even chat with some of the industry members or other
8 people out there at how do you think we should do that. That
9 doesn't make sense. That doesn't apply to the initiative. It
10 doesn't work.

11 Then it goes back up, and it's renumbered again with
12 the, usually in the LCB, and then after that comes back for one
13 final, then it goes to the LCB, and so assuming the LCB has
14 approved it, it goes to the tax commission.

15 The tax commission is, I think, an independent body,
16 I believe, appointed by the governor. It's citizens. It goes
17 to the tax commission. They vote on it. They voted it on
18 here. I think it was unanimous, but again I don't really know
19 for sure. So it goes to the tax commission. Assuming they do
20 approve --

21 By the way, they could reject it if it's not
22 constitutional or does not apply with the initiative.

23 They did not. So we can assume that they thought
24 they did comply all these regulations.

25 And then it goes to the legislative commission which

1 is a group of senators and assembly members. I can't remember
2 how many, maybe 13.

3 They have --

4 By the way, each step here, there is public
5 testimony, public hearing. People have the right to say and
6 are encouraged to comment on those. The industry did. Almost
7 every single plaintiff, almost every industry association said,
8 hey, if these regulations work, please pass them. They comply.
9 We want to get started. We want to get started with the whole
10 application process, things like that. So it goes to the, as I
11 said, it goes to the commission.

12 But like I say, the commission, and they vote on it
13 too, and as soon as they vote on it, then they go back to the
14 department so they can -- they have final regulations, and so
15 they can implement those as they know they comply with the
16 initiative and with the Constitution.

17 Q You mentioned something about the regulations for
18 recreational should match the medical regulations. Is there a
19 provision in the ballot initiative or statute that discusses
20 that?

21 A The ballot initiative has a clause in there. I guess
22 I don't -- unless you want to read it to me -- basically that
23 says that the initiative is not supposed to do anything to
24 interfere with the medical marijuana.

25 Q Is that 453D200, Subsection 1K?

1 A Can I go back here? And straighten out one more
2 question here that you asked me just a minute ago?

3 Q Yes.

4 A Is that allowed?

5 Q Yes.

6 A I wanted to let you know that the thousands and
7 thousands and thousands of hours that went into public hearing
8 and workshops and back and forth that everybody participated
9 in, I don't know if it was 10,000 hours or not, but it was a
10 large number and days and days and weeks and months of trying
11 to draft regulations and give input for the regulation.

12 Q And that was through workshops and the Governor's
13 task force as well; correct?

14 A Uh-huh. Yes. That's true.

15 Q Okay. Now, this provision, this we talked about with
16 the medical matching the recreational, which is in 200,
17 453D.200(1)(k), which says,

18 Procedures and requirements to enable a
19 dual licensee to operate medical marijuana
20 establishments and marijuana establishments
21 at the same location.

22 A Yeah. The intent was people had medical licenses so
23 obviously they're going to apply for recreational licenses.
24 Then there are rules in place for med. The idea was you'd try
25 not to have different sets of rules that would interfere; you

1 know, you have to operate one way for med and one way for rec.
2 And so the idea was unless you absolutely had to was to make it
3 so the locations could have both med and rec.

4 Q And you -- you've been in court when there's been
5 testimony about diversity used as a scoring criteria?

6 A Sure.

7 Q What is your opinion on whether diversity is directly
8 and demonstrably related to the operation of marijuana
9 establishments?

10 A 100 percent it is without any question whatsoever.

11 Q Can you tell us why.

12 A I'll just defer to Frank Hawkins. His testimony,
13 very clear. Frank is an honest guy. He knows about diversity.
14 And we all do, and so yes, it is directly related to the
15 operation of a successful business.

16 Q Is there any objection by the industry prior to the
17 adoption of the regulations about the use of diversity in the
18 scoring criteria?

19 A None.

20 Q There's a provision in the statute that talks about
21 proposed location. Are you familiar with that proposed
22 location?

23 A Are you talking about the initiative?

24 Q Yes.

25 A Yes.

1 Q Could you tell us what some of the problems would be
2 with having to secure property prior to submitting an
3 application.

4 A The industry had that problem on medical marijuana,
5 and then where you had to a secure a location in order to, I
6 think, apply for a license. So some people got a location,
7 then got local government approval. Then some of those people
8 didn't get licenses. So the unintended consequences was
9 obviously litigation because local government, you know, wanted
10 to, you know, issue a license, and some people, you know,
11 obviously didn't qualify for a license. So that had to be
12 fixed just to base upon having a location.

13 That was attempted to be straightened out where it
14 was clear that you did not have to have a location in place to
15 apply for a license, and one of the significant reasons is that
16 it -- let's just say you had a location in place. Well, and
17 you bought it or paid for it or leased it, if you didn't get a
18 license, then you were out all that money.

19 But not only in addition to that, if you applied for
20 a license and you named a location, two days later, you could
21 move it, and so having a location picked out as part of the
22 application process really doesn't make any significant
23 difference in terms of selecting the quality of an applicant
24 and going through who gets a license since it's just another
25 procedure to open.

1 Q And there were 462 applications during 2018 around.

2 Does that --

3 A Yes.

4 Q -- sound about right to you?

5 A Yes, that's right.

6 Q And there were only 61 licenses awarded?

7 A I think that's right.

8 Q So under that reading, they would have -- there would
9 be 462 separate pieces of property that would have to be tied
10 up prior to an application process?

11 A I apologize. Just let me -- just a second.

12 Will you be able to hear me?

13 THE COURT: Sir, do you want us to take a break?

14 THE WITNESS: No. No. No.

15 THE COURT: Or are you just standing up?

16 THE WITNESS: No, just gravity.

17 THE COURT: If you're okay just standing up, it's
18 okay with me.

19 THE WITNESS: I'm okay. Can you hear me then okay?

20 MR. GUTIERREZ: I can hear you.

21 THE COURT: Jill says yes.

22 THE WITNESS: Okay. I'm sorry. Can you repeat that.

23 BY MR. GUTIERREZ:

24 Q The question was there was 462 applicants.

25 A Yes.

1 Q And 61 license winners. They would have to be --
2 there would be approximately 400 pieces of property that were
3 secured and tied up that would not have one license; is that
4 fair, in this -- under this process?

5 A Yes. That's exactly correct.

6 Q Now, did you have a role as an owner of Thrive in the
7 actual filling out of the application for Thrive in 2018?

8 A None.

9 Q And who was the -- who did on behalf of Thrive take
10 lead on that.

11 A Our CEO Mitch Britten with various consultants.

12 Q How many licenses did Thrive ultimately win in the
13 2018 process?

14 A We won six.

15 Q Okay. Did Thrive win a license in every jurisdiction
16 it applied for?

17 A No.

18 Q After being awarded the six licenses in December
19 of 2018, tell us what steps Thrive took to get open under those
20 licenses.

21 A To the extent that we could apply for or go to a
22 jurisdiction to seek approval and their local licensing, we
23 did. In particular, we went to the City of Las Vegas, and we,
24 with a location, went through their process for their
25 licensing, inspection and so forth, built out a location on

1 West Sahara, went through a I think we would probably call it a
2 preopening process because we already had a license from the
3 State and, you know, subject to that you have to go through a
4 process for opening.

5 And they do an inspection before you open. They're
6 making sure they do an inspection, that your plans comply, you
7 have cameras and things like that because they have a process,
8 you know, for the facility, that it complies, not the
9 particular licensees anymore because that's done, the facility
10 complies.

11 Then they inspect the product that you have when you
12 take it in because we have a system here proceed to sale, and
13 so every single product is numbered and accounted for, and the
14 State ensures that you start with that product.

15 So they do an inspection. Obviously the local
16 government does an inspection for all your building plans and,
17 you know, making sure that things follow their rules too.

18 And then so you get a local government approval.
19 Then the State comes through to walk through, and then you get
20 your final approval to open which we did and which we got 3500
21 West Sahara.

22 And then there was a injunction stopping us from
23 opening.

24 Q Okay.

25 A We had all -- everything that -- everything that you

1 needed to open by the local government or the State had been
2 done and approved.

3 Q Okay. All right. And Thrive complied with the
4 injunction and still is, but it did not open under its new
5 license from the City of Las Vegas?

6 A No, it did not.

7 Q Did Thrive have to take steps to move another license
8 in order to keep that location?

9 A We did. We had employees over there, about I think
10 27 is what I think we said, plus we had an ongoing lease of
11 about \$20,000 a month. We had an existing under a license over
12 on Commerce. So after we were -- which wasn't the best
13 location and, you know, you have it -- and like I said before,
14 you're allowed to move a location with local government
15 approval. It obviously has to be approved by the State once
16 again.

17 So as we couldn't open that location, since we had a
18 location that was modest shall we say on Commerce, and we were
19 already paying money, we decided to move that license. So we
20 went to the local jurisdiction, got their permission. We went
21 to the obviously to the State to get their permission and then
22 went through their normal procedures for opening like that, as
23 I said, testing inventory and so forth. Then we -- we did open
24 a few days ago that license, that location with an existing
25 license that had been moved.

1 Q To be clear, you had to move the Commerce Park
2 location, the license you've had since 2017, over to this
3 location?

4 A Yes. And we had to move the one that was under the
5 injunction, since we couldn't use it, back to commerce, and we
6 closed Commerce.

7 Q All right. And was there a local ordinance
8 requirement to get open by the City of Las Vegas within a
9 90-day period that you're aware of?

10 A Oh, yes, there was. Yes. And that's one of the
11 reasons we had to move on that location because the risk of
12 losing, you know, your license or trying to get it extended, by
13 the --

14 Q After obtaining notice that Thrive won six licenses,
15 did Thrive have to pay a license fee for those license?

16 A Yes. Each license had to pay a license fee to the
17 State. I think it was \$20,000. So we paid \$120,000 for our
18 licenses.

19 Q So did Thrive pay the \$20,000 per license?

20 A Yes.

21 Q Okay. Are you aware of the regulation that that
22 requires those fees to be paid within a 10 day period, or the
23 department can revoke the license?

24 A Yes. They could revoke the license if we don't pay.

25 Q Okay. And can you tell us how much money Thrive

1 spent to get open in Reno.

2 A Around \$700,000, maybe a little bit more.

3 Q What's the status of the Reno license?

4 A We're still in the application process. We're on the
5 city council I think for approval. I think that has to go a
6 couple of times, and obviously, assuming they did approve, we
7 have to go to the State for final inspection of the facility to
8 open.

9 Q Now, Mr. Peckman, you've been in court almost every
10 day during this proceeding; correct?

11 A Yes.

12 Q Were you here some time in mid July when some of the
13 cultivator owners testified about not being able to buy a
14 license?

15 A Yes.

16 Q Okay. Is that a -- as you sit here, is that a true
17 statement?

18 A Absolutely not.

19 Q Can you explain to us why that isn't.

20 A There's licenses for sale everywhere. There's two
21 licenses for sale in Reno, dispensaries, that there's at least
22 two licenses with a -- by the way, that was through a broker up
23 in Reno and a broker down here. All of our licenses are for
24 sale. I've talked to at Thrive both the old ones and the new
25 ones, I've talked to almost every single one of the

1 intervenors. They'd be happy to sell a license, new or old. I
2 can tell you that many of the plaintiffs' are for sale.

3 Tryke has hired an investment banker, and they've got
4 a book trying to sell that.

5 MedMen bought a license before. They have one of
6 their existing licenses for sale.

7 NEO, which is David Goldwater's company, their
8 company is for sale. They have a license.

9 You can look if you want to, public information,
10 through the Las Vegas Medical Association. They have a list --
11 they have a list of every single license that was bought or
12 sold in the last year, and some of the intervenors actually
13 have letters, LOIs to sell the licenses they initially got,
14 deposits. There's licenses for sale everywhere, and if you
15 don't know that, then you're not trying to buy one.

16 Q So none of the cultivators contacted you about buying
17 a license from Thrive?

18 A Never.

19 Q Have you been contacted by any of the plaintiffs at
20 all about after winning your licenses about potentially selling
21 one?

22 A Of course. I get contacted all the time by
23 plaintiffs and intervenors about wanting to sell any of our
24 licenses. Sure.

25 Q Did you ever have a meeting with Bob Groesbeck from

1 MM Development after winning your license?

2 A Sure.

3 Q And tell us about that meeting.

4 A Bob, his company MM, did not get a license. They had
5 an existing facility that they wanted to put the license in,
6 and so he's got a public company, and he didn't get one. He
7 contacted us and several of the people that got licenses asking
8 if we would sell them one, and we said, of course, we will sell
9 you one. Just make us an offer, and we'll see if we can
10 negotiate the purchase price. He never made us an offer, but
11 he did ask if we had one for sale, and we said we did, and we
12 would be happy to negotiate.

13 Q When was this meeting?

14 A It was a few days after the licenses were granted.

15 Q And Thrive would be willing -- Thrive was willing to
16 sell a license. There was just no offer made; is that correct?

17 A Absolutely. There was no offer made.

18 Q Now, Mr. Peckman, can you tell us what the harm would
19 be to your company if a Court granted injunction preventing you
20 from opening and going forward?

21 A Absent all the time and effort and all the money
22 spent on two locations for development, build-out, leasing, all
23 that money would be lost, and so it's combined, you know, if
24 you had included even the fees we paid for, probably a couple
25 million dollars.

1 Plus, plus not being able to open the new licenses,
2 at any of the six locations, and so the lost revenue and profit
3 on that, not only by us, but the entire industry and lost taxes
4 to the State, taxes to local government. If we are unable to
5 prevail in this litigation, we'll have to lay off employees.
6 So there'll be a loss of existing jobs, a loss of future jobs,
7 not only for us by anyone else.

8 Q And are you aware of a 12-month period under the
9 regulations to get open or lose your license? Under the --

10 A Yes. Yes. We are.

11 Q And is that a deadline that's still in place as you
12 sit here today?

13 A Yes, it is.

14 Q Okay.

15 A That expires in December. Without any type of
16 renewal or extension, every single license that has been
17 granted is subject to being lose it, or it's revoked or however
18 you want to say that, and it would be gone, and there would
19 have to be, assuming they would issue licenses in the future,
20 there would have to be another application process.

21 Q Has the State give you -- given you any formal
22 indication that it's going to extend that deadline?

23 A We don't know yet. We don't know if they're going to
24 extend that deadline or not.

25 Q Some of the plaintiffs have asked, testified about

1 wanting the process to be voided and redone, the entire
2 application. Can you tell us about some of the unintended
3 consequences that could happen if there is a complete redo of
4 the process given some of the exclusivity language.

5 A Well, we think that actually violates the initiative
6 by doing that. The idea of the initiative, if you want to look
7 at the language, basically said is the people of Nevada want
8 recreational marijuana, and it lists the number of licenses and
9 it asks the State to implement that. It asked the State to
10 draft the regulations, asked the State to collect all the
11 taxes.

12 And so if you, and if you understand the initiative,
13 the initiative was meant so that the existing licensees, that's
14 anybody who had a medical marijuana license, a dispensary, a
15 production license or a grow license, for the first 18 months,
16 only those people could apply. And that was, specific, that's
17 so the existing people could apply for licenses.

18 If, in fact, that was thrown out and the initiative,
19 the intent was I think violated and the people's intent was
20 violated, then the next process for an application could
21 include theoretically thousands of applications. We might not
22 get one. Any intervener, obviously, and anybody who's a
23 plaintiff may not get one. I mean, they didn't get one this
24 time around with the 400, how about 400,000 applications.

25 Q And that's because it would open it up to the entire

1 public, not just the existing entities --

2 A They have to.

3 Q One of the risks or harms that potentially could
4 affect the State would be if there's been money collected for
5 not only licensing fees, but application fees that could
6 potentially have to be returned?

7 A Yes. Yes. Absolutely.

8 Q I mean, just my rough math, at 462 applications, at
9 \$5,000 each, that's about 2.3 million?

10 A Yes. That's correct.

11 Q And 61 licenses at \$20,000 each for about
12 1.2 million; is that correct?

13 A That's correct.

14 Q Okay. You've heard testimony about a decrease in
15 market share as well from some of the plaintiffs. Do you
16 recall that?

17 A Yes, I do.

18 Q Do you think there's any way to say with certainty
19 whether there would be a decrease in market share if new
20 licenses were awarded?

21 A No, in our opinion, we applied. Obviously we all
22 applied for licenses because we wanted them, the plaintiffs and
23 the interveners. So we all think there was some value in
24 those. You know, we think the market will grow, and we know
25 there are licenses for sale. So obviously those licenses have

1 some value, and whether it's 1 million or \$20 million. So our
2 projections say that will, the entire industry and every store
3 will make money, and the old stores will make money.

4 I've heard the arguments that, you know, it takes
5 away from existing stores. There's no proof of that
6 whatsoever; right? This is -- this is even more speculative
7 than my statement that you'd be harmed that way, that your
8 market share would go down.

9 Plus, if you're a plaintiff in this case, and you're
10 a cultivator, you had no market share to begin with. So
11 nothing is going down for you, and that's a significant number
12 of the plaintiffs here.

13 MR. GUTIERREZ: Thank you, Mr. Peckman.

14 I would pass the witness, Your Honor.

15 THE COURT: Cross-examination.

16 MR. KEMP: Yes, Your Honor.

17 THE COURT: Mr. Kemp.

18 THE WITNESS: Once again, Your Honor, thank you.

19 THE COURT: Absolutely, sir.

20 If you'd rather take a break before Mr. Kemp starts,
21 we could.

22 MR. GENTILE: Your Honor, can we take just like the
23 two-minute break, seriously, so that counsel can consult?

24 THE COURT: Sure. Mr. Gentile, this is not a
25 requested break, which means the witness can talk to anybody he

1 wants.

2 Mr. Cristalli, could you come up here, please.

3 MR. CRISTALLI: Yes, Your Honor.

4 THE COURT: So five minutes, guys.

5 (Proceedings recessed at 10:15 a.m., until 10:23 a.m.)

6 THE COURT: Are we ready?

7 MR. KEMP: Yes, Your Honor.

8 THE COURT: You can sit down if you'd like. The rest
9 of you can stand up if you want. I know some people feel like
10 their backs feel better if they stand up occasionally. That's
11 okay with me.

12 Mr. Kemp, you're up.

13 CROSS-EXAMINATION

14 BY MR. KEMP:

15 Q Good morning, Mr. Peckman.

16 A Mr. Kemp.

17 Q I'd say it's good to see you again, but I've spent
18 quite a bit of time with you lately.

19 In any event, you said, quote, all of our licenses
20 are for sale referring -- that was what you said; right?

21 A 100 percent.

22 Q Okay. And prior to this application process, how
23 many licenses did Thrive have?

24 A Two.

25 Q So both of those licenses are for sale?

1 A Absolutely.

2 Q And they both have operating dispensaries?

3 A Yes, they do.

4 Q So you're not willing to sell the license without
5 selling the dispensary too, or are you?

6 A I'm sorry. I didn't understand that.

7 Q Are you willing just to sell the license and shut
8 down the dispensary?

9 A That's a negotiation between the buyer and the
10 seller. They may want to take over the location.

11 Q Has anyone ever actually made an offer on either one
12 of those two licenses?

13 A Make an offer. I guess I'd have to think what an
14 offer actually is. We probably have had eight or ten meetings
15 with various people asking if we are for sale or would we sell,
16 and at various public companies. Do I have -- did I have a
17 signed offer in place? I don't think so.

18 Q Okay. So you've never had an offer. And have you
19 listed them for sale?

20 A Other than telling the world that they're for sale, I
21 guess if that's listing, then that's listing.

22 Q So when you said all of your licenses are for sale,
23 were you meaning it in the sense that everything is for sale?

24 A No, not particularly.

25 Q Okay.

1 A No. There's -- licenses are bought and sold every
2 single day.

3 By the way, our cultivation is for sale too.

4 Q Okay. Let's refer to those two licenses. If I
5 offered you a million dollars today, would you sell them?

6 A I doubt it.

7 Q Two?

8 A No.

9 Q Five?

10 A Are you talking the two existing?

11 Q Yeah, the two existing. If I offered you 5 million,
12 would you sell it?

13 A No, I don't think so.

14 Q Ten?

15 A Are you talking cash?

16 Q Cash. If I give you 10 million cash today, would you
17 sell me the Sahara store, the 3500 West Sahara store?

18 A U.S. cash?

19 Q Is there another kind? Okay.

20 A No. No.

21 Q U.S. cash. No, you wouldn't sell?

22 A Probably not.

23 Q Okay.

24 A There is a higher price though I would sell.

25 Q A hundred million?

1 A Okay.

2 Q So when you say everything is for sale, you're
3 basically saying you haven't had any offers; you haven't listed
4 it, but in your mind everything is for sale?

5 A The people that come talk to us say would you sell a
6 license or this or that, or will you take public stock in this
7 or that since we haven't been inclined to say make us a solid
8 offer, and we'll sell it for that yet.

9 Q Okay.

10 A No.

11 Q Now, you recognize that there's 26 plaintiffs in this
12 litigation, at least 26; right?

13 A Okay. I haven't counted, but if you say there are,
14 then there are.

15 Q 25, 26, 27.

16 A Sure.

17 Q You're not testifying that all of them, even if they
18 had unlimited funds, could buy -- buy a license, do you -- are
19 you? I mean, you recognize there's a limited number of
20 licenses here?

21 A There always has been.

22 Q So you would agree with me that all 26 plaintiffs it
23 would be impossible for them each to buy a license, even if
24 they had unlimited funds; right?

25 A I don't know that. How many licenses do they want?

1 Q Okay. There were 10 licenses offered in this
2 procedure in Clark County, unincorporated Clark?

3 A Are you talking about the State?

4 Q Yeah.

5 A Well, if 26 people want licenses --

6 Q And there's only 10 -- and there's only 10 licenses.

7 A Oh, you're talking about in the county?

8 Q Uh-huh.

9 A Well, statewide there's a whole bunch of licenses for
10 sale.

11 Q Okay. Let's just focus on county by county first.

12 A Okay.

13 Q In Clark County, in this licensing procedure, there
14 were 10 licenses in unincorporated Clark, yes?

15 A Ten licenses as part of the application process, yes.
16 Yes.

17 Q And there were also 10 in the city of Las Vegas?

18 A Yes.

19 Q So you would agree with me that even if the 26
20 plaintiffs had a billion dollars a piece to offer, it's just
21 impossible for them all to buy a license because there's not
22 enough licenses?

23 A In those two jurisdictions, if we're -- but if you
24 want to go across the street you can buy a license.

25 Q What do you mean by that?

1 A Well, if you want to go over to Henderson, you can
2 buy one. North Las Vegas, usually they're separated by about a
3 thousand feet.

4 Q Henderson there's a moratorium. You can't open a
5 store in Henderson.

6 A There's a moratorium in a lot of places. It doesn't
7 mean you'll never be able to open a store.

8 Q So you would agree with me that the 26 plaintiffs,
9 even if they had unlimited funds, could not buy a license in
10 Clark County because there just aren't enough, an
11 unincorporated Clark County license?

12 A If all 26 plaintiffs wanted a license in Clark
13 County, then they couldn't get one. The same for most of the
14 intervenors too though.

15 Q Okay. And the same is true for the City of Las Vegas
16 and all the other jurisdictions if we went through?

17 A If you went one at a time, that's an accurate
18 statement.

19 Q Okay. And how about if I got the Winnemucca license?
20 Would you trade me your 3500 West Sahara license for the
21 Winnemucca license?

22 A I might. I don't know.

23 Q You would trade me a Winnemucca license for a City of
24 Las Vegas license at 3500 West Sahara?

25 A I might do that. Really, I'd have to know a little

1 bit more about Winnemucca. I'm sure it's a nice place. I
2 don't know how many people live there, or is there a store
3 there now?

4 Q No. There's a moratorium up in Winnemucca now.

5 A A moratorium doesn't mean anything to me.

6 Q A moratorium or a local government says you can't
7 open doesn't mean anything to you?

8 A Not particularly.

9 Q Why is that?

10 A Because that's subject to change. Right now the
11 county won't take licenses. As soon as this litigation is over
12 and the good guys prevail, then there will be licenses
13 available.

14 Q Meaning my clients?

15 A Of course. Of course.

16 Q All right. Now, Mr. Peckman, let's talk about the
17 3500 West Sahara store.

18 A Sure.

19 Q That's the one by the church; right?

20 A The church you go to.

21 Q If you want to come some time, then feel free.

22 A You call me. We'll go together on a Sunday morning.

23 Q It could be a marketing thing for you. Okay.

24 But anyway, with regards to the church --

25 A Yes, sir.

1 Q -- that church was subject to -- excuse me, that
2 store next to the church was subject to a TRO; correct?

3 A By this Court?

4 Q Yes.

5 A Yes, it was.

6 Q And there was a bond posted to secure that TRO in the
7 amount of \$450,000?

8 MR. GRAF: Well, objection, Your Honor. Misstates
9 evidence.

10 THE COURT: Overruled.

11 MR. GRAF: -- and is subject to a pending motion.

12 THE COURT: No speaking objections, Mr. Graf.

13 MR. GRAF: Thank you, Your Honor.

14 THE COURT: But overruled.

15 BY MR. KEMP:

16 Q There's still a bond posted for \$450,000; right?

17 A Yes. I think it's been funded. I'm not so sure, but
18 I think so.

19 Q Okay. And you've already opened a store because you
20 moved a license over to it. You opened it last week; right?

21 A Yes, we did.

22 Q So you have no damages there, and yet there's still
23 the \$450,000 bond posted?

24 A Well, we moved the license subject to the --

25 Q So you had --

1 A -- TRO to --

2 Q You would agree with me you had --

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

4 BY MR. KEMP:

5 Q Go ahead.

6 THE COURT: Sir, were you done?

7 THE WITNESS: We moved that license subject to the
8 TRO over to our location on Commerce where we can't open
9 because of the TRO. So that license is over there subject to a
10 injunction.

11 BY MR. KEMP:

12 Q Okay. But you opened the store on 3500 West Sahara
13 that you offered purported damages for to get the \$450,000
14 bond; right? You opened that store?

15 A With an existing license, yes.

16 Q So those damages that you brought to the Court with
17 regards to the 3500 West Sahara store, they don't exist
18 anymore; right?

19 A They exist over on Commerce, not on the 3500 West
20 Sahara.

21 Q The Commerce store, the one that you called not the
22 best location.

23 A No, it's not.

24 Q It's the one by the -- behind the old Wholesome Bread
25 facility? On Charleston.

1 A I didn't say behind, but it's over at Commerce and
2 Charleston.

3 Q Okay. It's close to that?

4 A Yes.

5 Q Okay. All right. Would you agree with me that the
6 bond amount for that store, if any, would be significantly less
7 than the west Sahara store?

8 A No, I wouldn't.

9 Q Do you think that --

10 A I think the bond for West Sahara was too low.

11 Q Okay. Fair enough.

12 Now, you talked about a meeting you had with
13 Mr. Groesbeck?

14 A Yes.

15 Q Okay. And you said, quote, That he never made you an
16 offer, unquote. Did I write that down right?

17 A He said to me -- I said, make us an offer. He said,
18 no. Tell me how much you want. You make me an offer first.

19 Q So you never made him an offer, and he never made you
20 an offer?

21 A He didn't want to -- he did not want to make an offer
22 because he said I don't want to negotiate with myself.

23 Q And just to make it clear, that was a provisional
24 unincorporated Clark County license that you were discussing;
25 correct?

1 A I don't know what provisional means. It's the
2 license?

3 Q Okay. It's one of the ones in the 2018 procedure?

4 A That is. True.

5 Q Okay. So let's call it a 2018 license.

6 A Right.

7 Q Fair. So he never made you an offer for the 2018
8 unincorporated Clark County license; correct?

9 A No, he did not.

10 Q And you never put a price on it?

11 A No, we did not.

12 Q Okay. Have you put a price on it for anybody at any
13 time?

14 A Someone asked if we would sell a location, existing
15 location for \$20 million. We said we would consider it. There
16 are offers out there for existing 2018 licenses and LOIs for
17 \$10 million. Would we sell one for that? That's very
18 possible, very possible.

19 Q Okay.

20 A We're waiting for an offer.

21 Q So my question was have you ever evaluated what that
22 license is worth, and you said yes, no, what?

23 A Are you talking old or new?

24 Q You, the 2018.

25 A We talk about it all the time in our company. If we

1 were to sell one and how much and to who.

2 Q So, yes, you've evaluated it?

3 A Yes. Yes, we have talked about it.

4 Q What's the number you put on it?

5 A It really depends on whether it's a cash or public
6 securities.

7 Q Let's assume it's cash as opposed to stock.

8 A 20 million.

9 Q So you think unincorporated Clark County license
10 could be had for 20 million? From your company?

11 A Yes, I do.

12 Q And once again, even if all the 25 plaintiffs had
13 20 million apiece and they wanted to buy, that's one license.
14 That's -- the other 24 get nothing or could get nothing.

15 A It depends about their financing. I'm assuming they
16 could borrow money --

17 Q I'm just talking numbers to you.

18 A -- to come up with the license that's valuable.

19 Q Assuming all 25 had 20 million, you just have one
20 license that you think could be had for that amount; right?

21 A I have one, but there's more than enough licenses in
22 the State for sale to sell to every one of the plaintiffs.

23 Q So there's -- okay. I thought we were past that.
24 There are not 26 licenses in unincorporated Clark County.

25 A Oh, I'm sorry. Yes.