

IN THE SUPREME COURT OF THE STATE OF NEVADA

GREENMART OF NEVADA NLV
LLC, A NEVADA LIMITED
LIABILITY COMPANY; NEVADA
ORGANIC REMEDIES, LLC,

Appellants,

vs.

ETW MANAGEMENT GROUP LLC,
A NEVADA LIMITED LIABILITY
COMPANY; GLOBAL HARMONY
LLC, A NEVADA LIMITED
LIABILITY COMPANY; GREEN
LEAF FARMS HOLDINGS LLC, A
NEVADA LIMITED LIABILITY
COMPANY; HERBAL CHOICE INC.,
A NEVADA LIMITED LIABILITY
COMPANY; JUST QUALITY, LLC, A
NEVADA LIMITED LIABILITY
COMPANY; LIBRA WELLNESS
CENTER, LLC, A NEVADA LIMITED
LIABILITY COMPANY; MOTHER
HERB, INC., A NEVADA LIMITED
LIABILITY COMPANY; GBS
NEVADA PARTNERS, LLC, A
NEVADA LIMITED LIABILITY
COMPANY; NEVCANN LLC, A
NEVADA LIMITED LIABILITY
COMPANY; RED EARTH LLC, A
NEVADA LIMITED LIABILITY
COMPANY; THC NEVADA LLC, A
NEVADA LIMITED LIABILITY
COMPANY; ZION GARDENS LLC, A
NEVADA LIMITED LIABILITY
COMPANY; and STATE OF
NEVADA, DEPARTMENT OF
TAXATION,¹

Respondents.

ETW MANAGEMENT GROUP LLC, a
Nevada limited liability company;

SUPREME COURT CASE NO.
79669

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**RESPONDENTS' APPENDIX
VOLUME V**

¹ Appellants' caption failed to include GREEN THERAPEUTICS LLC, ROMBOUGH REAL ESTATE INC. dba MOTHER HERB, and MMOF VEGAS RETAIL, INC. and incorrectly named MOTHER HERB, INC. and GBS NEVADA PARTNERS.

GLOBAL HARMONY LLC, a Nevada limited liability company; GREEN LEAF FARMS HOLDINGS LLC, a Nevada limited liability company; GREEN THERAPEUTICS LLC, a Nevada limited liability company; HERBAL CHOICE INC., a Nevada corporation; JUST QUALITY, LLC, a Nevada limited liability company; LIBRA WELLNESS CENTER, LLC, a Nevada limited liability company; ROMBOUGH REAL ESTATE INC. dba MOTHER HERB, a Nevada corporation; NEVCANN LLC, a Nevada limited liability company; RED EARTH LLC, a Nevada limited liability company; THC NEVADA LLC, a Nevada limited liability company; ZION GARDENS LLC, a Nevada limited liability company; and MMOF VEGAS RETAIL, INC., a Nevada corporation,

Respondent/Cross-Appellants,

v.

STATE OF NEVADA, DEPARTMENT OF TAXATION, a Nevada administrative agency.

Respondent.

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**RESPONDENTS' APPENDIX
VOLUME V**

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LLC, ROMBOUGH REAL ESTATE INC. dba MOTHER HERB, NEVCANN LLC,
RED EARTH LLC, THC NEVADA LLC, ZION GARDENS LLC, and MMOF
VEGAS RETAIL, INC. (collectively, "ETW Parties")*

Document Description	Date	Page Nos.
Evidentiary Hearing – Day 4 Transcript	05/30/2019	RA0815 – 1057

RESPONDENTS' APPENDIX (ALPHABETICAL)

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RED EARTH LLC, THC NEVADA LLC, ZION GARDENS LLC, and MMOF
VEGAS RETAIL, INC. (collectively, "ETW Parties")*

Document Description	Volume
Amended Application for Mandamus to Compel State of Nevada, Department of Taxation to Move Nevada Organic Remedies into "Tier 2" of Successful Conditional License Applicants (November 11, 2019)	Volume XI RA2002 – 2056
E-mail from Mr. Shevorski (August 21, 2019)	Volume X RA1902 – 1904
ETW Plaintiffs' Complaint (January 4, 2019)	Volume I RA0179 – 250
ETW Plaintiffs' Complaint – Continued (January 4, 2019)	Volume II RA0251 – 493
ETW Plaintiffs' Second Amended Complaint (May 21, 2019)	Volume III RA0494 – 743
ETW Plaintiffs' Second Amended Complaint – Continued (May 21, 2019)	Volume IV RA0744 – 814
Evidentiary Hearing – Day 4 Transcript (May 30, 2019)	Volume V RA0815 – 1057
Evidentiary Hearing – Day 6 Transcript (June 10, 2019)	Volume VI RA1058 – 1282
Evidentiary Hearing – Day 7 Transcript (June 11, 2019)	Volume VIII RA1350 – 1600

Evidentiary Hearing – Day 7 Transcript – Continued (June 11, 2019)	Volume IX RA1601 – 1602
Evidentiary Hearing – Day 17 Transcript (August 13, 2019)	Volume IX RA1603 – 1694
Evidentiary Hearing – Day 20 Transcript (August 16, 2019)	Volume X RA1735 – 1901
Findings of Fact and Conclusion of Law Granting Preliminary Injunction (August 23, 2019)	Volume X RA1905 – 1928
Google Maps Photo (June 11, 2019)	Volume VII RA1344 – 1346
Governor’s Task Force on the Implementation of Question 2: The Regulation and Taxation of Marijuana Act (May 30, 2017)	Volume I RA0001 – 162
GreenMart of Nevada NLV’s Trial Memorandum (August 15, 2019)	Volume IX RA1714 – 1723
Hearing on Objections to State’s Response, Nevada Wellness Center’s Motion Re Compliance Re Physical Address, and Bound Amount Setting (August 29, 2019)	Volume XI RA1929 – 2001
Nevada Organic Remedies’ Organizational Chart (2018)	Volume I RA0163 – 178
Nevada Organic Remedies’ Pocket Brief Regarding the Interpretation of NRS 435D.200(6) and the Mandate to Conduct Background Checks of Each Owner of an Applicant for a Recreational Marijuana License (August 14, 2019)	Volume IX RA1695 – 1713
Notice of Entry of Order Denying Amended Application for Writ of Mandamus to Compel State of Nevada, Department of Taxation to Move Nevada Organic Remedies into “Tier 2” of Successful Conditional License Applicants (January 14, 2020)	Volume XI RA2057 – 2062
State of Nevada Pocket Brief Regarding the Meaning of the Phrase “All Regulations Necessary or Convenient to Carry Out the Provisions of” (June 10, 2019)	Volume VII RA1283 – 1343
The Essence Entities’ Bench Brief (Corrected) (August 15, 2019)	Volume IX RA1724 – 1734
UPS Store Address (June 11, 2019)	Volume VII RA1347 - 1349

DATED this 19th day of June, 2020.

BROWNSTEIN HYATT FARBER SCHRECK, LLP

/s/ Adam K. Bult

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing **RESPONDENTS' APPENDIX VOLUME V** was filed electronically with the Nevada Supreme Court on the 19th day of June, 2020. Electronic service of the foregoing document shall be made in accordance with the Master Service List as follows:

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/s/ Wendy Cosby
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TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

SERENITY WELLNESS CENTER LLC, .
et al. .

Plaintiffs .

CASE NO. A-19-786962-B

vs. .

STATE OF NEVADA DEPARTMENT OF .
TAXATION .

DEPT. NO. XI

Defendant .

**Transcript of
Proceedings**

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BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

EVIDENTIARY HEARING - DAY 4

THURSDAY, MAY 30, 2019

COURT RECORDER:

TRANSCRIPTION BY:

JILL HAWKINS
District Court

FLORENCE HOYT
Las Vegas, Nevada 89146

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

APPEARANCES:

FOR THE PLAINTIFFS:

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

FOR THE DEFENDANTS:

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

ALSO PRESENT:

CHRISTIAN BALDUCCI, ESQ.
For Stacey Dougan

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

2 (Court was called to order)

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

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

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

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

11 THE COURT: Oh, boy.

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

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

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

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

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

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

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

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

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

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

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

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

9 THE COURT: 10, 11, 12.

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

11 MR. KOCH: 11 and 12.

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

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

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

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

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

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

21 THE COURT: I mean, you know --

22 (Pause in the proceedings)

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

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

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

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

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

6 MR. PARKER: Reno on an appeals matter.

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

8 MR. PARKER: Carson City, yes.

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

11 THE COURT: Really.

12 MR. HYMANSON: Yes.

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

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

16 (Pause in the proceedings)

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

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

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

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

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

7 THE COURT: You can.

8 (Pause in the proceedings)

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

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

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

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

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

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

21 (Pause in the proceedings)

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

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

1 had inquiry --

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

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

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

13 THE COURT: Okay.

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

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

21 Mr. Balducci, why are you here?

22 MR. BALDUCCI: 'Morning, Your Honor.

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

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

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

10 THE COURT: And who subpoenaed her?

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

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

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

20 THE COURT: Okay.

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

24 THE COURT: Okay.

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

1 some dates and times.

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

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

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

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

10 THE COURT: And you know how that works.

11 MR. BALDUCCI: I do. I do.

12 THE COURT: Goodbye.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 MR. SHEVORSKI: Very good, Your Honor.

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

22 Who's our next witness?

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

1 Who's Witness Number 4?

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

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

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

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

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

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

14 Mr. Kemp, you may proceed.

15 DIRECT EXAMINATION

16 BY MR. KEMP:

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

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

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

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

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

3 Q When did you get the Ph.D?

4 A Ph.D was awarded in 2009.

5 Q And where were you working at that time?

6 A Washington State University.

7 Q What was your job?

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

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

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

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

15 A I moved on to a new position at Boise State
16 university, where I am currently the dean of students.

17 Q And when did you start there?

18 A I started there in 2012.

19 Q Okay. Have you had any involvement with diversity?

20 A I have.

21 Q And what's that?

22 A I've had several involvement beginning in my career
23 at Washington State University where I developed some
24 diversity training programs. I taught student development
25 theory, elements of which included identity development,

1 multicultural and diversity issues, and I also participated in
2 the Division of Student Affairs Equity and Diversity in
3 developing equity and inclusion laws and rules for students.

4 Q You're familiar with diversity in general?

5 A I am.

6 Q Are you familiar with diversity hiring practices?

7 A I am.

8 Q Are you familiar with diversity as it applies to
9 college admissions programs?

10 A Yes.

11 Q And are you familiar with diversity policies with
12 regard to discrimination and harassment?

13 A Yes.

14 Q Have you been -- are you familiar with diversity
15 with regards to government procurement programs?

16 A No.

17 Q Okay. Have you administered diversity procurement
18 programs at WSU?

19 A No.

20 Q Okay. Are you a member of any professional groups
21 involved with diversity?

22 A I remember two organizations that have interests and
23 responsibilities for diversity matters. One is the National
24 Association of Student Personnel Administrators, which handles
25 inclusion and diversity efforts from an association level

1 training professionals who work on college campuses. And then
2 secondly, the National Association of Higher Education
3 Administrators, which is a collection of faculty who research
4 diversity matters and provide scholarly articles, journals,
5 and policy information.

6 Q Okay. I notice you're using the terms "diversity"
7 and "inclusion" separately.

8 A Yes.

9 Q Can you explain to the Court what the difference is.

10 A Well, diversity, of course, is policies and rules
11 and laws that may direct folks to accomplish hiring or
12 admissions practices based upon ethnicity and/or race.
13 Whereas inclusion is essentially how you go about doing those
14 matters, including providing support for individuals who are
15 seeking to be included in the community.

16 Q Have you been involved in the design of any
17 diversity programs?

18 A Yes, I have.

19 Q Where at?

20 A At the University of Idaho and at Washington State
21 University. And at the University of Idaho, which was an
22 employer of mine in the late '90s, I developed programs to
23 attract and recruit students to the University. At Washington
24 State University I was a part of the Division of Student
25 Affairs Equity and Diversity elements, which included work

1 with LGBT populations, African-Americans, Asian, Pacific
2 Islanders, Native Americans, and other students.

3 Q And LGBT, is that included in diversity at the
4 present time in some programs?

5 A Yes, it is.

6 Q Okay. Is that a common feature in some diversity
7 programs?

8 A It is a common feature in most. I'd say it's pretty
9 universal.

10 Q Okay. Are you familiar with other governmental
11 programs -- before we start about the Department of Taxation
12 program, are you familiar with other government programs here
13 in the state of Nevada?

14 MR. SHEVORSKI: Objection. Vague.

15 THE COURT: Overruled. You can answer.

16 THE WITNESS: I'm generally familiar with some of
17 the local organizations and agencies such as the Airport
18 Authority, the Las Vegas Metropolitan Police Department, who
19 have programs and protocols for diversity and inclusion
20 efforts.

21 BY MR. KEMP:

22 Q And taking the Airport Authority as an example, what
23 do they focus on in their diversity program?

24 A From what I understand, they focus on ownership and
25 representing that someone needs to be a majority owner in

1 order to be included in the definition for diversity.

2 Q Is there a reason that some diversity programs focus
3 ownership, as opposed to other areas?

4 A My understanding is that ownership is generally tied
5 to governmental contracting where there's an interest that the
6 government has to ensure that diverse owners are represented
7 appropriately in the process or inclusion.

8 Q And have you looked at various materials with regard
9 to this case?

10 A Yes, I have.

11 Q Have you looked at the application form for the
12 recreational marijuana licenses?

13 A Yes, I have.

14 Q And have you also looked at the State's definition
15 of diversity in the application criteria points breakdown?

16 A Yes, I have.

17 Q And, for the record, that's Exhibit 209.

18 Have you also looked at the diversity scoring
19 desktop procedure, Exhibit 111?

20 A Yes, I have.

21 Q And have you looked at the federal guidelines that
22 someone attached to the desktop scoring procedure?

23 A Yes, I have.

24 Q And have you had a chance to review Mr. Plaskon's
25 testimony from May 28th?

1 A Yes, I have.

2 Q Okay. Do you have any opinions regarding the
3 diversity program applied by the Nevada Department of
4 Taxation?

5 A The protocols I reviewed look wholly inadequate to
6 accomplish any diversity and inclusion efforts.

7 THE COURT: And, Mr. Kemp, you're only limiting it
8 to the applications that we're dealing with here, not any
9 other programs they have?

10 MR. KEMP: I'm limiting it to the diversity program
11 of DOT, Your Honor.

12 THE COURT: For the cannabis applications.

13 MR. KEMP: Right.

14 THE COURT: Okay.

15 MR. KEMP: I don't know that they have any others,
16 Your Honor.

17 THE COURT: Well, I'm trying to make sure that I
18 don't get into other areas I don't need to be in.

19 BY MR. KEMP:

20 Q With regards to the marijuana applications do you
21 have an opinion as to whether or not the DOT provided clear
22 guidelines to the applicants as to what would or would not be
23 considered a diverse person?

24 A In reading the material provided I don't believe
25 they provided clear guidance for those individuals.

1 Q Did they provide any guidance whatsoever to the
2 applicants?

3 A Not that I could intelligibly discern from the
4 information I reviewed.

5 Q Okay. With regards to whether or not the DOT even
6 had a diversity program at the outset when the applications
7 were filed do you have an opinion on that?

8 A From the material I reviewed it doesn't appear to me
9 that they had any diversity protocols that the Department
10 utilized for their services or programs.

11 Q Okay. Why do you feel that way?

12 A From reviewing testimony from yesterday, Mr.
13 Plaskon. I believe he was able to articulate appropriately
14 any information that an employee would need to know to
15 administer a program. And I don't believe the documents they
16 provided evidence much forethought, as well.

17 Q Are there definitions that are reasonably or
18 universally accepted for diverse categories?

19 A There are.

20 Q And what are they?

21 A There are six, if you include Caucasians or white
22 individuals. The others are Asian, Pacific Islander, Native
23 American, Alaskan Native, African-American. I think I'm
24 missing one. But there are generally six categories.

25 Q Hispanic?

1 A Hispanic. Thank you.

2 Q Okay. And are there also subcategories of those
3 various categories?

4 A Yes, there are.

5 Q And using Hispanic as an example can you give me a
6 -- focusing on Hispanic can you give me an example of a
7 government program that uses subcategories of Hispanics?

8 A Hispanic is ethnicity, it's not considered race.
9 And so oftentimes you'll see that as a category. And used as
10 ethnicity there are specific things such as college
11 enrollment, sometimes for employment purposes, but there are
12 specific definitions and guidelines as to what Hispanics
13 represent.

14 Q Such as?

15 A Hispanics generally are those who have been
16 historically marginalized that might represent people from
17 South America and Mexico who once were considered Hispanic
18 under a really antiquated, old definition of diversity that
19 the United States used to use.

20 Q Are you talking about the '64 definition that was in
21 the desktop guidelines?

22 A Yes.

23 Q Okay. All right. Let's take a look at Exhibit 209,
24 please. Have you seen this before?

25 A I have.

1 MR. KEMP: Okay. Where are the points awarded,
2 Shane? I think we need the scoring section portion with the
3 definitions. Points awarded for percentage of principals.

4 (Pause in the proceedings)

5 BY MR. KEMP:

6 Q Okay. With regards to this language -- have you
7 seen this before?

8 A Yes, I have.

9 Q And focusing you on the phrase "points awarded for
10 percentage of principals which are non-Caucasian, female, and
11 non-Anglo/European American," do you have an opinion as to
12 whether that is an adequate diversity definition?

13 A That is not.

14 Q Why is that?

15 A "And" I think confuses this issue, female and non-
16 Anglo.

17 Q The word "and" is not appropriate?

18 A The word "and" should be "or.:

19 Q Okay. Pretty obvious mistake?

20 A Well, you know, I believe if you have a good grasp
21 on what is diversity, that wouldn't be one to miss, because it
22 changes the statement.

23 Q Okay. And do you have any criticisms of the use of
24 that definition?

25 A You know, it lacks the degree of specificity needed

1 in order to intelligently discern a score, to be able to rank
2 an individual or an organization.

3 Q And even if they had given the applicants this
4 definition, it wouldn't be able to be applied?

5 A No, I don't believe it can be appropriately applied.

6 Q And with regards to requiring it be female and non-
7 Anglo/European American what is the significance of requiring
8 it "and"?

9 A Well, so if you're going to represent female and
10 non-Anglo Americans, that's going to rule out any Caucasian
11 female or person representing to be female if they're
12 Caucasian.

13 Q And what would the effect be on male African-
14 Americans?

15 A I'm sorry?

16 Q Would they be ruled out, too? If you have to be
17 female and --

18 THE COURT: He's asking you if black males would fit
19 in that definition, sir.

20 BY MR. KEMP:

21 Q Black male couldn't be a female?

22 A Well, a black male -- you may have an individual
23 who's transgender who chooses to represent themselves as --

24 Q Let's leave that out.

25 A Yeah.

1 Q But it says "female and"; correct?

2 A Uh-huh.

3 Q So you have to be a minority that's a female to
4 literally come within this definition; correct?

5 A As I read it, yes, that's correct.

6 Q Is that appropriate?

7 A Not if you're attempting to attain diversity in your
8 final results.

9 MR. KEMP: Okay. Let's take a look at the federal
10 guidelines. Can we pop those up, Shane. This is from the
11 diversity desktop calculator. Pop that up and zoom in a
12 little bit, make it bigger.

13 THE COURT: Can you see that, sir?

14 THE WITNESS: Yes, I can.

15 THE COURT: All right.

16 BY MR. KEMP:

17 Q Okay. And are these the '64 guidelines that the
18 federal government came up with?

19 A Yes, they are.

20 Q Are they still being used today, 55 years later?

21 A No, they're not.

22 Q And has the federal government changed its
23 guidelines for definition of minority?

24 A Yes, they have.

25 Q And without getting too elaborate, can you tell me

1 when the change was made and some of the basic features of the
2 change.

3 A The changes sought to provide more clarity as to
4 what the federal government considered diverse for its
5 programs, which include the entirety of the federal
6 government. And specifically they separated Asian into Asian
7 and Pacific Islander and provided some additional countries to
8 illustrate their examples. And they also provided a
9 definition as to what constituted a Caucasian or white person.

10 Q When did that happen?

11 A That happened in 2007 before the delivery of the
12 2010 census.

13 Q To the best of your knowledge does any government
14 use this 55-year-old definition except for the Nevada
15 Department of Taxation?

16 A No.

17 Q Okay. Do you think it's appropriate to use the 55-
18 year-old definition of minorities?

19 A No. It is antiquated.

20 Q And how do people find this definition?

21 A Well, I Googled it when I saw it, because it struck
22 me as antiquated. So there's one manner. But I think more
23 importantly, if you're reading this and expecting it to be
24 accurate, it would evidence to me that you're not familiar
25 with what constitutes diversity and inclusion efforts for

1 administering a program.

2 Q Okay. And earlier you referenced a clarification
3 for Hispanics with regards to their country of origin. How
4 does this treat Hispanics with regard to their country of
5 origin?

6 A This references specific countries under a racial
7 category, rather than an ethnic category.

8 MR. KEMP: Can you blow that up a little bit, Shane,
9 the Section B.

10 BY MR. KEMP:

11 Q Okay. And what do you mean by that?

12 A Well, this speaks to Hispanic as race, and Hispanics
13 are no longer considered under a racial category. It's
14 considered an ethnic category. And in reference to what this
15 might constitute, particularly when you read "other Spanish
16 culture or origin regardless of race, that might constitute
17 individuals who come from Spain.

18 Q So would an individual that came from Spain be
19 defined as Hispanic in this category?

20 A Yes.

21 Q And would it be -- an individual from Spain be
22 defined as Hispanic in the first definition we looked at,
23 which was non-Caucasian female and non-Anglo/European
24 American?

25 A Under this definition would say yes.

1 Q Okay. And so the definitions are inconsistent with
2 regards to any person that's an applicant from Spain?

3 A Yes.

4 Q And are there other countries that these two
5 definitions would potentially be inconsistent with regards to?

6 A I think if you get into the Caribbean and countries
7 in the area of South America, yes.

8 Q Okay. And is it your understanding that the State
9 relied in part upon the applicants to self identify their
10 diversity?

11 A From reading the application, yes.

12 Q And from reading Mr. Plaskon's testimony?

13 A Yes.

14 Q How could an applicant possibly accurate self
15 identify himself as diverse or nondiverse if that applicant
16 did not know what the definition of "diversity" was?

17 A For the purpose of being evaluated I don't know how
18 they would do that.

19 Q Okay. Is it possible?

20 A I think if you're attempting to have outcomes as
21 stated in the material I read, the law and other things, no.

22 Q Outcomes that are focused on true diversity.

23 A Yes.

24 Q Okay. All right. And in general what's your
25 summary opinion in this case?

1 A I think as this was administered it's horribly
2 antiquated and ineffective, and the results will not lead this
3 agency to achieve diversity.

4 Q Does it appear to you that the DOT gave thoughtful
5 consideration to this area of the application?

6 A They did not.

7 Q And is that potentially a problem for diversity
8 programs?

9 A You know, I think if you're trying to reach certain
10 milestones and markers, it would be a problem. It results in
11 actually furthering discriminatory problems.

12 MR. KEMP: No further questions.

13 THE COURT: Thank you.

14 Anyone else on the plaintiffs' group wish to
15 examine? Mr. Parker.

16 MR. PARKER: You gave me a look, Your Honor.

17 THE COURT: Well, no. I was looking because you
18 were sitting there.

19 MR. PARKER: I felt singled out.

20 THE COURT: Oh. All right. Sorry, Mr. Parker. I
21 didn't mean to --

22 MR. PARKER: No, not for the obvious reasons.

23 THE COURT: -- didn't mean to single you out.

24 MR. PARKER: Let just put that out there.

25 //

DIRECT EXAMINATION

BY MR. PARKER:

Q Doctor, how are you?

A Fine, thank you.

Q Doctor, what is the goal -- and I'm asking this question because I asked it of Mr. Plaskon yesterday. What is the goal of adding diversity to an application process? Can you tell me what the answer is? Because he did not know the answer yesterday.

A And you're speaking to this process here today?

Q Let's talk about generally, and then to this process.

A Generally it's to achieve diversity so that all individuals can be included in societal issues and benefits.

Q And is there a benefit for having diversity?

A Yes, there is.

Q And tell me what that benefit is.

A Well, it benefits our entire community. It benefits those who work with individuals, who do business with individuals, for individual freedoms and liberties.

Q So is there a benefit for perhaps Asians or Native Americans to be able to go into an establishment where there are also Asians or Native Americans that own or operate that establishment?

A Yes, I believe that.

1 Q And why do you believe that?

2 A Because we want individuals to feel included. And I
3 mentioned earlier about diversity and inclusion.

4 Q Right.

5 A It's important for the inclusion piece, not just to
6 be able to represent.

7 Q Okay. From your review of the documents did you --
8 were you able to determine whether or not there was a single
9 minority -- based upon your understanding of what racial --
10 what races there are in this country identified and recognized
11 by the United States Government and the applicants that
12 applied for these licenses, did you see a single minority
13 owner awarded a license in this?

14 A All I saw in the materials that were identified by
15 the State were the names of individuals where they're a board
16 member. It didn't include race or ethnicity in information
17 that I saw.

18 Q All right. If in fact not a single minority owner
19 received a license, would you agree with me that the purpose
20 behind including diversity in the application process was not
21 achieved?

22 A Yes. It failed.

23 MR. PARKER: That's all I have. Thank you very
24 much.

25 THE COURT: Any additional plaintiffs wish to

1 inquire?

2 If I could go to the State, Mr. Shevorski.

3 MR. SHEVORSKI: Thank you, Your Honor

4 (Pause in the proceedings)

5 CROSS-EXAMINATION

6 BY MR. SHEVORSKI:

7 Q Good morning. Is it Dr. Wuthrich?

8 A Yes. Good morning.

9 Q My name is Steven Shevorski. I'm with the State of
10 Nevada. It's a pleasure to meet with you today.

11 As I understand it, part of your Ph.D was -- in
12 trying to obtain and you did obtain that degree, was studying
13 diversity.

14 A Yes, I did.

15 Q And so can you tell me why you personally thought
16 that was worth your time.

17 A You know, if we're trying to achieve equitable
18 results for individuals, those that administrator higher
19 education programs, which is what I was doing at the time and
20 still do today, it's important to understand that material and
21 be able to represent or to include individuals and understand
22 what they're coming from to achieve the State's goals in this
23 case.

24 Q And you mentioned with respect to higher education
25 that that was part of your studying, is diversity in the

1 context of higher education I think you mentioned. Do you
2 study diversity in the context of any other aspect of life,
3 for example, just using this example, in terms of a business
4 and a business's place in the community?

5 A Yes. And universities are businesses. Universities
6 are part of everyday life.

7 Q And so -- and what did you -- and in terms of the --
8 I'm thinking of a Dartmouth College case, Your Honor.

9 In thinking of diversity in the context of
10 businesses you used universities. Can you explain what you
11 mean by -- why is diversity in your opinion in the context of
12 businesses and their place in the community.

13 A Well, you know, outside the law, which requires us
14 to not discriminate on the basis of race and ethnicity, there
15 are other important social benefits which I alluded to
16 earlier, including having individuals be included in society,
17 being able to represent --

18 Q Let me stop you, because I think you're going on to
19 a list. So individuals included in society. What do you mean
20 by that?

21 A Well, I think you need to have equal protection for
22 individuals, those that apply for positions of employment and
23 those who are admitted to institutions. If they're using
24 race. Public institutions don't often use race, but some
25 private institutions. We want individuals to be able to go,

1 for example, and be schoolteacher and to understand the issues
2 that a person of color might be impacted by. Those that are
3 trained in schools of business, same thing.

4 Q What about entrepreneurs, giving advantage to
5 entrepreneurs who want to open a business in a particular
6 community? Is diversity important in your opinion there,
7 giving advantage to minority entrepreneurs?

8 A You know if the state says it's important, then
9 it's important. If it's a legitimate state interest, it may
10 well be important.

11 Q I'm sorry. Could you say that again.

12 A If a state believes that diversity is important and
13 they're writing laws that don't conflict with other federal
14 laws, then it may be important. I think it's up to those
15 writing those laws.

16 Q And so certainly a rational choice for them, isn't
17 it?

18 A Pardon me?

19 Q It's a rational choice to believe that diversity is
20 important -- giving opportunity to entrepreneurs in opening a
21 business, that's a rational choice, isn't it, for the state?

22 A Yes.

23 Q You'd applaud that decision, wouldn't you? You've
24 dedicated part of your professional life to diversity.

25 A Would I applaud that decision? Well, I think for

1 some of us it's required in terms of if you're an employee of
2 an organization, particularly a state, who has rules and laws
3 and compliance efforts that are dedicated towards ensuring
4 equal protection or [unintelligible] to laws, then yes.

5 Q Okay. You mentioned that you reviewed the
6 transcript of Mr. Plaskon.

7 A Yes.

8 Q And what position did Mr. Plaskon have with the
9 Department of Taxation?

10 A Near as I could discern, he was a facilitator. I'm
11 not sure what that means in government speak.

12 Q Do you know one way or the other whether or not he
13 was responsible for administering any program within the
14 Department of Taxation separate and apart from the marijuana
15 licensing?

16 A Not that I could determine from the transcript, no.

17 Q And you currently in the state of Washington, or in
18 the state of Idaho?

19 A I'm in the state of Idaho.

20 Q Okay. And you did part of your education in the
21 state of Washington?

22 A I completed a Ph.D in the state of Washington.

23 Q Let's go to the other side of the Coasts. Let's do
24 the state of Maine. Are you familiar with the definition of
25 diversity in the state of Maine?

1 A No.

2 Q Are you familiar with -- let's go down the Coast --
3 with the definition of diversity in the state of
4 Massachusetts?

5 A No.

6 Q Are you familiar with the definition of diversity
7 with respect to any state on the right coast? Let's call that
8 the East Coast, Your Honor.

9 A The East Coast? Not as an individual state might
10 apply it. I'm familiar with it as the federal government
11 would apply it.

12 Q You're not -- so you're not familiar with the
13 definition of diversity with respect to any state in the
14 United States of America?

15 A Well, if they're going to -- no, I'm not. I'll
16 leave it at that.

17 Q Is the state of Nevada, to your knowledge, required
18 by any federal law to adopt a specific definition of diversity
19 not -- we'll say not inconsistent with the Constitution?
20 United States Constitution.

21 A I'd say yes and no.

22 Q Please explain your answer.

23 A You know, yes if you're going to be doing business
24 with the federal government, if you're accepting their money,
25 you're required to follow the guidelines in the specific

1 areas. In other ways the answer may be no other than equal
2 protection with reference to civil rights laws that started in
3 '64 and ended up in the '70s.

4 Q So based on your answer if the state of Nevada
5 wanted to adopt the definition of minority from the 1964 Civil
6 Rights Act, it's free to do so?

7 A I don't believe they are.

8 Q And why is that, sir?

9 A Well, that particular reference was reference to the
10 EEOC, which is an organization that handles responses to
11 discrimination complaints, and so the answer really lies in
12 some of the details there. But generally no.

13 Q So you're saying that the EEOC commands the state of
14 Nevada to use a different definition of diversity with respect
15 to how it's going to use diversity in a marijuana application?
16 Is that what you're telling me?

17 A I think -- I think if the state of Nevada wants to
18 achieve diversity, they need to have better definitions.

19 Q I'm sorry. That's not my question. My question was
20 does the EEOC command the state of Nevada to use a different
21 definition of diversity to score the applications for the
22 marijuana licensure?

23 A No.

24 Q So state of Nevada can adopt whatever definition it
25 wants to so long as that definition does not violate the

1 United States Constitution; isn't that correct?

2 A For? Which procedure are you referencing?

3 Q For the [unintelligible] we're talking about,
4 applications for marijuana, retail marijuana businesses.

5 A Yes.

6 Q Thank you. Are you familiar with the scientific
7 method?

8 A I am.

9 Q What is it?

10 A The scientific method is generally procedures and
11 protocols, methodologies to test theories, obtaining the
12 results.

13 Q Right. And does it have particular elements that
14 are generally understood?

15 A Depends on the theory.

16 Q What would be the elements that you would choose to
17 describe the scientific method?

18 A You have -- if you're talking about a true
19 scientific method, you'd have a control group, you'd have a
20 test group, you'd have something to test, you'd run that
21 protocol through, and you'd have results based upon an
22 analysis.

23 Q Okay. My friend Mr. Kemp asked you a number of
24 questions about applicants being confused by the reference to
25 diversity in the application. Do you recall that?

1 A Yes.

2 Q Okay. And you said that you thought it was
3 confusing, that people could be -- you couldn't conceive of
4 them not being confused; is that correct?

5 A Yes.

6 Q Did you employ the scientific method to find out if
7 that was actually the case?

8 A You wouldn't apply the scientific method that we
9 referenced here a minute ago to analyze that issue.

10 Q You wouldn't? What about a survey? Did you do a
11 survey of applicants --

12 A I did not.

13 Q -- to see if they were actually confused?

14 A I did not.

15 Q Have you spoken to any applicants to see if they
16 were confused?

17 A I do not know who the applicants are.

18 Q Okay. So you've never spoken to Mr. Kemp's clients
19 to see if they were actually confused by the application?

20 A I do not know who their clients are.

21 Q Mr. Gentile's clients?

22 A I do not know their client.

23 Q Mr. Parker's clients?

24 A Do not know his client.

25 Q Mr. Bult's clients?

1 A I don't know his client.

2 Q So you're not aware that any applicant was actually
3 confused by the reference to diversity in the application?

4 A I do not know.

5 Q Have you read the current definition of "diversity"
6 in Title 20 United States Code, Section 1067(k)?

7 A Not recently.

8 Q Okay. It says, "The term 'minority' means American
9 Indian, Alaskan Native, black not of Hispanic origin, Hispanic
10 (including persons of Mexican, Puerto Rican, Cuban, and
11 Central or South America origin), Pacific Islander, or other
12 ethnic group underrepresented in science and engineering."

13 Before I think you said that the definition of
14 Hispanic was antiquated in the one the Department was using;
15 is that correct?

16 A Yes.

17 Q You would agree with me that at least in Section
18 1067(k) it doesn't exclude that definition, does it? It says
19 "including."

20 A Do you have a copy of that? I don't know if that's
21 even current law.

22 Q I have a copy of it, and it's got my highlights on
23 it, but I'm happy to give it to you. Would you like to see
24 it?

25 THE COURT: So that's the Armed Forces'?

1 MR. SHEVORSKI: Yes.

2 THE COURT: Okay. I just Googled Title 10, because
3 I wasn't familiar with which group.

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

5 THE COURT: Yes, you can.

6 BY MR. SHEVORSKI:

7 Q You can have it.

8 A Okay. This is referencing a diversity issue for the
9 delivery of institutional financial aid.

10 Q That's right.

11 A Yeah.

12 Q All right. So before you said that the -- the
13 entire federal government that the state's definition of
14 Hispanic was inconsistent with how current federal law is in
15 the entire federal government.

16 A Uh-huh.

17 Q You'd have to agree that that was not correct?

18 A This references unrepresented groups in science and
19 engineering, not as a general population approval, the way I
20 read it.

21 Q Right. But the plain language of the text in
22 reference to Hispanic says right next to it, including those
23 groups. Doesn't say only those groups, does it?

24 A It does, but it -- this is references minorities,
25 it's not representing race and ethnicity issues, which are

1 different if you want to get into the slicing and dicing.

2 Q That statute doesn't limit the definition of
3 Hispanic the way your prior testimony was that it couldn't be
4 someone of Spanish heritage the way you conceive of diversity.

5 A It wouldn't -- for the purpose of diversity issues,
6 what I mentioned earlier, I believe anybody of European
7 descent would not be included in diversity, they'd be included
8 as a white individual.

9 Q Does that definition exclude them?

10 A This speaks to Mexicans, Puerto Ricans, Cubans, and
11 Central or South American of origin.

12 Q Including, but not limited to; right?

13 A Well, there could be other individuals there, but if
14 you want to speak to Hispanic to get into the details, I don't
15 believe that's an appropriate reference.

16 Q Okay. May I have that back.

17 A You may.

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

19 THE COURT: You may.

20 MR. SHEVORSKI: Thank you.

21 I have no further questions, Your Honor.

22 THE COURT: Any of the defendants in intervention
23 wish to inquire?

24 Mr. Koch.

25 //

1 CROSS-EXAMINATION

2 BY MR. KOCH:

3 Q Hi, Mr. Wuthrich. My name is David Koch. I
4 represent one of the companies that's participating in this
5 litigation.

6 Did you review any of the applications that were
7 submitted to the State by companies looking to obtain a
8 marijuana license?

9 A I saw only blank applications, I guess. I didn't
10 review any of the applicants, no.

11 Q Okay. Well, you did -- you were aware -- let me
12 ask. When was the first time you were contacted about this
13 case?

14 A Maybe two weeks, week and a half.

15 Q Okay. And you met with or talked with Mr. Kemp
16 prior to appearing for your testimony today?

17 A Yes, I did.

18 Q That item about the female and non-Anglo, was that
19 discussed during that meeting you had with Mr. Kemp?

20 A It's been discussed on multiple occasions.

21 Q So did Mr. Kemp bring that up and ask your opinion
22 on it?

23 A No, he did not.

24 Q Did you review any application that had any
25 information with respect to anyone's ethnicity or race on it,

1 any portion of an application?

2 A No.

3 Q Did you find any instance in the review that you did
4 to prepare for today where an applicant was listed as a black
5 male, but was not given credit for diversity points as
6 described in the State's program?

7 A I reviewed lots of material. I've seen the scores.
8 But I couldn't discern from that how that might have been
9 reached without looking at the actual application.

10 Q Right. So you've opined that based upon the "and"
11 definition that Mr. Kemp has talked about a lot during this
12 case that theoretically there could be somebody who could be a
13 black male who didn't receive credit for being diverse, but
14 you're not actually aware of any instance of that; correct?

15 A I'm not.

16 Q What about anyone from Spain? Based upon your
17 explanation you said there could be some confusion about that,
18 if someone was from Spain whether they would be credited for
19 that or not or any instance where someone was confused on
20 that?

21 A Not having seen the applications, no.

22 Q Okay. Does Boise State have an admissions policy
23 with respect to diversity?

24 A No, we -- well, we have an admissions policy, and we
25 provide equal protection to our applicants, but we don't have

1 a policy that sets aside race and ethnicity for the purposes
2 of admission.

3 Q Okay. It doesn't give extra points for being either
4 female or of a minority?

5 A We have no admissions policy that references extra
6 points for the purposes of admission.

7 Q Okay. So you in your background and history have
8 not worked with determining admissions based upon diversity?

9 A No.

10 Q Do you know if other colleges have admission
11 policies that include diversity as a specific portion of them?

12 A Most public institutions don't, with exception of
13 some flagship places, like Michigan, Texas, and some private
14 institutions, such as Harvard, Yale.

15 Q Okay. What is let's say -- Michigan you referenced.
16 What is their diversity policy?

17 A They have a competitive application process, and
18 they use a holistic admissions process, and that process
19 allows for individuals to receive points or credit for diverse
20 experiences.

21 Q Diverse experiences? What about race or gender?

22 A Yes, race and gender, as well. Generally race.
23 Gender isn't usually of concern when you reference race and
24 ethnicity. In fact, that's a whole separate matter. Gender
25 is a whole separate matter from race and ethnicity.

1 Q Okay. And Michigan's policy, as you understand it,
2 is a permitted policy that Michigan has chosen to adopt?

3 A It's been litigated, and they've reached a point
4 where I guess it's for now generally accepted.

5 Q This -- the federal description of "diversity" said
6 it was adopted in 1964, abandoned 2007. Is that when it was
7 changed?

8 A Well, I don't believe that that language was adopted
9 in 1964. If you read the 1964 law, it speaks to race, we
10 discriminate on the basis of race, which then at the time
11 references generally a binary, black, white. Later on and
12 things evolve, right, the definition that we saw was populated
13 for the explicit purpose of reaching those goals. But the law
14 does not reference people by ethnicity or race, quote unquote.

15 Q That definition, though, you said it was antiquated;
16 is that right?

17 A Yes.

18 Q When did it become antiquated?

19 A In 2007.

20 Q And the matters that we're dealing with here are
21 2018 is when the application took place. Did the federal
22 government send out a notice to all states that this
23 definition should no longer be used for any internal state
24 programs?

25 A If you're doing business with the federal

1 government, you probably received that information, yes.

2 Q What if you're not doing business with the federal
3 government?

4 A Such as?

5 Q Selling marijuana.

6 A You have a good question.

7 THE COURT: Yeah, probably not.

8 THE WITNESS: Probably not, yeah.

9 MR. KEMP: No further questions.

10 MR. GENTILE: [Unintelligible] other announcements
11 out there.

12 THE COURT: Anyone else on the defendants in
13 intervention team who would like to make inquiry?

14 Anyone else?

15 MR. GENTILE: Your Honor, I did no direct, but
16 something that came up on cross impacts, my case, I so I'd
17 like to --

18 THE COURT: You may ask a question or two.

19 MR. GENTILE: Thank you.

20 DIRECT EXAMINATION

21 BY MR. GENTILE:

22 Q Doctor.

23 A Good morning.

24 Q I want to mention three terms, and then I want you
25 to address them, assuming that you in the course of your

1 developing your expertise have encountered them.

2 The first term we've already dealt with. That's
3 diversity, the second firm is affirmative action, and the
4 third term is antidiscrimination. Are they all the same?

5 A They're three separate matters.

6 Q Okay. Why don't you tell us first -- let's start
7 from the last -- well, let's start with the first. Let's talk
8 about diversity.

9 A What would you like to know about it?

10 Q I'd like to know what diversity is.

11 A Diversity represents a number of things generally.
12 If you want to count in specifics, it represents a
13 representation of individuals of different races and
14 ethnicities in employment and in other public matters, in
15 school admissions. It references making sure that in hiring
16 -- I'll leave it. Leave it at that.

17 Q Okay. Now, with regard to affirmative action, in
18 recent years, the last 10 years or so, the United States
19 Supreme Court's turned around a little bit on their attitude
20 about affirmative action when the state's involved, haven't
21 they?

22 A Somewhat.

23 Q Okay. What is affirmative action?

24 A Affirmative action is to make sure that you're
25 including specific individuals based upon the definition that

1 you might provide. Some states, for example, include veterans
2 as a protected class. But to ensure that you're at least
3 advancing qualified candidates into an applicant pool for
4 consideration.

5 Q And what is antidiscrimination?

6 A That's policies and procedures and activities
7 sometimes based on compliance to ensure that a program or
8 service provided by a governmental agency or a business, if it
9 falls into that category, isn't discriminating against
10 clientele and individuals who might be doing business or
11 having a relationship or interaction with that group.

12 Q Now, on your examination by my worthy adversary Mr.
13 Shevorski --

14 MR. SHEVORSKI: Not his friend.

15 BY MR. GENTILE:

16 Q -- you said, and I didn't write it down verbatim,
17 but I'm going to try to draw you back to it if you recall. He
18 asked you a question that presumed that the State had enacted
19 as part of some legislation or State action diversity. And
20 you responded to that by saying that, well, if the state
21 enacted it as part of the law...." What did you say about
22 that, do you remember?

23 A Can we read back that part of the testimony?

24 THE COURT: Nope, we can't, sir. You've got to
25 remember.

1 BY MR. GENTILE:

2 Q No, we can't.

3 A Repeat your question for me.

4 Q Well, let me say it a little differently. You
5 assumed, because his question did, that a state had enacted a
6 law that included diversity as a mandatory component. And you
7 said that if the state passes a law that deems diversity
8 important, then it's important. I think that's the words that
9 you actually used.

10 A So, yes, I've read that law, the law referencing
11 this issue today, and there's specific language in it that
12 references it should be open to diversity.

13 Q Now, let me ask you. You said you read that law.
14 Are you aware of Article 19 of the Nevada Constitution?

15 A No. What is it?

16 Q Do you know what an initiative is?

17 A Yes.

18 Q All right. Is it your understanding that an
19 initiative is direct democracy with the people deciding what
20 the law is going to be?

21 A Yes.

22 Q Okay. Have you read the ballot question that
23 created the ultimate legislation in this case?

24 A No.

25 Q Okay. With regard to what you called the law that

1 contained this concept of diversity, the law that you read and
2 that you call law is a regulation; am I right? It's part of
3 the Nevada Administrative Code?

4 A Yes, it is.

5 Q And it was not part of the ballot of question, was
6 it?

7 A Having not read the ballot question, I couldn't tell
8 you.

9 Q All right. But what you did read where you got this
10 idea that the law of Nevada required diversity with regard to
11 medical -- excuse me, with regard to marijuana retail
12 establishments emanated from the regulation?

13 A My understanding is from that regulation, yes.

14 MR. GENTILE: I don't have anything further.

15 THE COURT: Hold on. Mr. Kemp, did you want to
16 redirect at all?

17 MR. KEMP: I just have one question, Your Honor.

18 THE COURT: Okay.

19 REDIRECT EXAMINATION

20 BY MR. KEMP:

21 Q Sir, was the reason that you did not look at the
22 individual applications -- was the reason you didn't look at
23 them, was it your understanding that the Court has entered a
24 protective order at the request of the defendants or
25 interveners and the State that precludes experts, except a

1 statistician, from looking at individual applications?

2 A That's my understanding, yes.

3 MR. KEMP: Thank you.

4 THE COURT: And that's what I did, so --

5 Okay. We're going to around the room one more time
6 because of Mr. Gentile's questions, starting with Mr.
7 Shevorski.

8 MR. SHEVORSKI: Thank you, Your Honor.

9 RECROSS-EXAMINATION

10 BY MR. SHEVORSKI:

11 Q My worthy adversary Mr. Gentile asked you about a
12 number of --

13 THE COURT: You do better with "friend." It just
14 sounds better coming out of your mouth.

15 MR. SHEVORSKI: Very true, Your Honor. And I have.

16 BY MR. SHEVORSKI:

17 Q And he was asking you about the referendum in his
18 reference to the regulation. I have one question. You're not
19 a judge, are you?

20 A I'm not a judge.

21 MR. SHEVORSKI: Thank you.

22 THE COURT: Anyone else on the defendants
23 intervention?

24 Anyone else on the plaintiffs' side?

25 Thank you, sir. I would leave before they change

1 their minds.

2 Next witness.

3 Have a nice day, sir. Travel safely.

4 MR. SAVARESE: Dr. Valerie Fridland, Your Honor.

5 THE COURT: And this is my linguistic expert?

6 MR. SAVARESE: That's correct, Your Honor. And good
7 morning, Your Honor.

8 THE COURT: Good morning.

9 Next witness.

10 Have a nice day, sir. Travel safely.

11 MR. SAVARESE: Dr. Valerie Fridland, Your Honor.

12 THE COURT: And this is my linguistic expert?

13 MR. SAVARESE: That's correct, Your Honor.

14 THE COURT: Thank you.

15 MR. SAVARESE: And good morning, Your Honor.

16 THE COURT: Good morning.

17 VALERIE FRIDLAND, Ph.D, PLAINTIFFS' WITNESS, SWORN

18 THE CLERK: Please be seated. And please state and
19 spell your name for the record.

20 THE WITNESS: My name is Valerie Fridland.
21 V-A-L-E-R-I-E, last name F-R-I-D-L-A-N-D.

22 THE COURT: Miss, there are pitchers of water there.
23 You have tons of exhibit binders around you. The marshal is
24 refilling your water pitcher.

25 THE WITNESS: Oh. I was going to say, I don't see

1 the pitcher, but thank you.

2 THE COURT: He took it with him to refill it for
3 you. And there are M&Ms in some of those dispensers if you
4 should need some energy.

5 THE WITNESS: Okay, thank you.

6 THE COURT: Okay.

7 THE WITNESS: Thank you, Your Honor.

8 THE COURT: You're welcome.

9 DIRECT EXAMINATION

10 BY MR. SAVARESE:

11 Q Dr. Fridland, what is your occupation?

12 A I am a linguist, a theoretical linguist specializing
13 in Sociolinguistics at the University of Nevada, Reno.

14 Q And what -- you are a full professor?

15 A I am a full professor, yes.

16 Q And you are also the director of the graduate
17 studies in the English Department?

18 A I am the director of graduate studies for English,
19 and a full professor in linguistics in that same department.

20 Q And how long have you been employed there as a full
21 professor of Linguistics?

22 A I have been there for quite some time. I started in
23 1999, so I'm on my 20th year, I'm afraid.

24 Q Congratulations.

25 A I started when I was two.

1 Q Now, what is your educational background?

2 A I have a Ph.D. in theoretical linguistics from
3 Michigan State. I have a Master's degree in English from the
4 University of Memphis and I have a Bachelor's degree from the
5 School of Languages and Linguistics at Georgetown University.

6 Q And have you received any grants or awards in your
7 field?

8 A I have received many grants and awards. I've been
9 funded for many years by the National Science Foundation from
10 the Behavioral and Cognitive Sciences Division. I've also
11 received numerous grants from the university itself and I've
12 also received a national award from the American Dialect
13 Society for the best paper on American speech that I
14 published.

15 Q How about publications? Are you a published author?

16 A I have published a few things, yes.

17 Q In your discipline?

18 A Uh-huh, yes. I have published -- I have several
19 books. I have one book on Language in Society and also a
20 companion video series for the Great Courses. I have two
21 volumes I've published on speech in the west called, very
22 inventively, Speech in the Western States. I am finishing my
23 third volume of that series and I am also completing a book on
24 socio-phonetics for Cambridge University Press as we speak.
25 In terms of articles and book chapters, I would say -- I

1 haven't actually counted in many years, but at least 40,
2 probably 50 articles or chapters.

3 Q Now, Dr. Fridland, were you provided by me with some
4 materials to review and to conduct a comparative analysis of
5 those materials with principles of your discipline?

6 A Yes. I have reviewed the statute language, the
7 language of the regulations, and as well as provided with a
8 copy of the application.

9 Q And the statute, that would be NRS 453D. That's the
10 chapter and you read that in its entirety?

11 A I did, yes.

12 Q And you were provided with the Nevada Administrative
13 Code with a corresponding number, 453D?

14 A Yes, I was.

15 Q And you have read that?

16 A I have.

17 Q And you have read the application, studied the
18 application for licensing that's at issue in this case?

19 A Yes, the application as well.

20 THE COURT: The blank application; right?

21 THE WITNESS: Yes. Blank.

22 MR. SAVARESE: A blank application.

23 THE WITNESS: Yes.

24 MR. SAVARESE: Yes. Blank.

25 //

1 BY MR. SAVARESE:

2 Q Now, before we -- I ask you anything about that, not
3 to be pedantic with the Court, but can you just for the record
4 tell us what is the discipline of linguistics?

5 A Sure. The discipline of linguistics is a
6 theoretical field that studies the underlying structure of a
7 language. So a lot of people think linguistics is about
8 languages, so do you speak French or Spanish, but actually
9 what we study in theoretical linguistics is how is it that
10 speakers of languages universally are able to understand the
11 meaning of sounds, of words and of sentences.

12 Q Now, within that discipline, within that category of
13 linguistics, is there a concept known as semantics?

14 A Yes. Semantics is one of the sub-fields of
15 linguistics.

16 Q Sub-field. What is semantics?

17 A Semantics is the study of the directly asserted or
18 the meaning attached directly to the words, sentences or
19 phrases that are used, so the literal or the obligatory
20 meaning associated with the words, phrases and sentences.

21 Q And in contra-distinction I just want to -- my
22 purpose here is to go over certain terms, what lawyers call
23 terms of art that you're going to refer to later on.

24 A Of course.

25 Q Is there a concept known as pragmatics within the

1 discipline of linguistics?

2 A Yes. Pragmatics is a related field to semantics.

3 Q What is it?

4 A It is context-dependent meaning. So while semantics
5 deals with the literal interpretation of words, sentences and
6 phrases, pragmatics deals with the knowledge we bring in from
7 the world, so general principles of life that we know, such as
8 the sun rises and sets and things like that. But importantly
9 also, the things that have been stated in a previous discourse
10 to which we were all participants. So if we're in a
11 conversation I understand things that were prior in the
12 conversation also are important to interpret ongoing
13 conversation, and that's what pragmatics looks at.

14 Q Whereas semantics is the language, the obligatory
15 interpretation of the language based on the words actually
16 used?

17 A Yes. I'm happy to give an example if that would
18 help.

19 Q What is an assertion in your discipline?

20 (Cell phone rings)

21 THE COURT: Can we turn them on silent?

22 THE WITNESS: That's a good example of an assertion.
23 An assertion is what we directly state by the words that we
24 utter. So the meaning that's directly attached to the words
25 and what those communicate to a listener with nothing else

1 added. So what we are directly stating about the world by
2 uttering a sentence.

3 BY MR. SAVARESE:

4 Q Is there a concept known as common ground?

5 A There is. Common ground is the shared knowledge
6 that we build up as participants in a conversation and we rely
7 on it for interpretation.

8 Q What is a set?

9 A A set -- well, there's a whole theory of what's
10 called set denotation and whenever we use a noun phrase in
11 natural language, we denote a set of entities in the real
12 world that are referred to by that noun phrase. Those are
13 called the extensions or the reference. So if I say those
14 dogs are hungry, the set or the context set denoted by that
15 noun phrase is in a universe of discourse to which we would
16 have established with a common ground. There is a set of dogs
17 to which I could look for to satisfy that set.

18 Q ow, among sets are there closed and open sets?

19 A Yes, there are. Most noun phrases denote a
20 restricted set, so they tell us where to look in the world for
21 possible entities, but we have things called quantifiers that
22 can operate over those sets, which are additional words or
23 lexical items that introduce that noun phrase typically that
24 tell us whether it is a universal set, meaning any possible
25 referent can exist that would satisfy that set, or if it is a

1 very semantically restricted set so that only one member of
2 the set can be satisfied or there's a certain range of
3 entities which can enter in that set. In addition, the noun
4 phrase itself will tell us how big that set can be, when
5 coupled with the common ground.

6 MR. SAVARESE: Now, sir, if I may ask you to bring
7 up onto the screen NRS 453D.200, subsection 1, if you would.

8 THE COURT: And if you would prefer to look in a
9 book, I can hand you the volume that it's in the pocket part,
10 or you can look at the screen.

11 THE WITNESS: I brought my own.

12 THE COURT: Okay.

13 THE WITNESS: I had requested specifically that I
14 would have a set in case I couldn't read your screen.

15 THE COURT: So I'm looking at my own as well, so.

16 THE WITNESS: Okay.

17 MR. SAVARESE: And this language continues on to the
18 next page. There you go. Let's -- what I'm interested in --

19 THE COURT: Subparts (a) through (m).

20 MR. SAVARESE: Yes. Subparts (a) through (m).

21 BY MR. SAVARESE:

22 Q Now, let's, if you would, take a look at the
23 prefatory language in subsection 1 and read that, if you
24 would, in conjunction with subsection (b). So that would be
25 1(b) --

1 A Okay.

2 Q -- reading that together.

3 A Certainly.

4 Q 1. "Not later than January 1st, 2018, the Department
5 shall adopt all regulations necessary or convenient to carry
6 out the provisions of this chapter. The regulations must not
7 prohibit the operation of marijuana establishments, either
8 expressly or through regulations that make their operation
9 unreasonably impracticable. The regulations shall include:
10 (a)" --

11 Q No, (b). Just go right to (b).

12 A Oh, sorry. "(b) Qualifications for licensure that
13 are directly and demonstrably related to the operation of a
14 marijuana establishment."

15 Q Okay. Now I want to discuss with you a little bit
16 that provision.

17 A Okay.

18 Q Firstly, the use of the word shall, what is the --
19 in your discipline is there a concept known as the Deontic,
20 D-e-o-n-t-I-c modal, m-o-d-al? And if so, what is it?

21 A Yes. Shall belongs to a class of verbs known as
22 modal verbs and there are different types of modal verbs in
23 terms of how they contribute to the meaning of the sentence in
24 which they appear. Deontic modals are modals that express
25 obligation or necessity on the part of a deontic source or the

1 issuer of the obligation to the participant to which it is
2 directed.

3 There are different types of deontic modals. There
4 are deontic modals such as shall or must that express strong
5 necessity, meaning they are obligatory and necessary and they
6 must be done. Or there are deontic modals that express what
7 we call weak necessity and this would be something like may or
8 can that express permissibility but not a requirement. In
9 this case shall is a deontic modal with strong necessity
10 deontic force. So it obligates or necessitates that the
11 listener or the hearer or the recipient in this case must do
12 the action described by the modal.

13 Q And in this example what is your interpretation is
14 the assertion made here?

15 MR. KOCH: Your Honor, objection. I believe a
16 written objection has already been filed to this witness'
17 testimony regarding interpretation of the statute. That's the
18 judge's job. For the record I make the objection. I think
19 the testimony is not relevant because it is providing an
20 expert opinion on the state of law. I expect I know how this
21 Court will rule, but I'm making the objection for the record.

22 THE COURT: Overruled. It's interesting to hear the
23 difference between shall or may.

24 Okay, let's keep going.

25 //

1 BY MR. SAVARESE:

2 Q Is this an example of an assertion, 1(b)?

3 A Yes. It asserts that -- basically what it directly
4 states, that a regulation shall include or be comprised of
5 qualifications -- too bad I didn't bring my glasses --
6 qualifications for licensure that are directly and
7 demonstrably related to the operation of a marijuana
8 establishment. That is the direct assertion of that phrase.

9 Q And the set here would be qualifications for
10 licensure?

11 A There is a restricted set identified by the noun
12 phrase that is qualifications for licensure is directly and
13 demonstrably related to the operation of a marijuana
14 establishment. That consists of the set in the real world
15 that we should identify through this noun phrase. And by
16 explicitly stating these are the qualifications in this
17 particular case, it also constrains us not to look at any
18 other qualifications beyond this set.

19 Q So this is an example of a closed or limited set?

20 A Right. Yes, it's a restricted set. Correct.

21 Q And does the statute, anywhere that you have
22 observed, self-define what directly and demonstrably related
23 to the operation of a marijuana establishment means?

24 A No. There is no explicit --

25 Q Do you have an opinion as to its linguistic meaning

1 of the words "directly and demonstrably related"?

2 A Certainly. They have a conventional meaning, as
3 most words do, and usually if we don't separately define or
4 explain our meaning, we would assume as listeners in order to
5 communicate that, the conventional meaning associated with
6 those words would be the one to interpret. Directly would
7 simply mean something like without intervening factors.
8 Demonstrably would be something exhibiting or showing.

9 Q You have described this as a -- I forget the word
10 you used, but is this merely illustrative or is this what you
11 would call inclusive or exclusive?

12 A The reading of --

13 MS. SHELL: I'm just going to object because it
14 calls for a legal conclusion, Your Honor.

15 THE COURT: Overruled. You can answer.

16 THE WITNESS: Thank you, Your Honor. Yes, well, if
17 you look at -- so it's really important here that we
18 understand the common ground in part of our interpretation,
19 which is why assertions in the common ground interact in
20 important ways. But if you take together the regulations
21 shall include and then (a) through (m), but particularly
22 focusing on (b), qualifications for licensure directly and
23 demonstrably related to the operation of a marijuana
24 establishment -- I'm going to be able to say that in my sleep
25 -- you have to -- we have to look at what's directly and

1 explicitly stated semantically to get the meaning. And so
2 that explicitly asserts that the regulations shall include
3 this specific set of qualifications.

4 If there was any other meaning intended, and
5 especially in the context of a statute, which as I understand
6 it is sort of the basis for all other subsequent regulations
7 that will ensue, we would have to state specifically with a
8 semantic marker of a different type any other interpretation
9 of include that we would intend. So, for example, I would
10 need some sort of syntactic or adverbial attachment to the
11 verb include that would say something like shall include but
12 is not limited to or shall minimally include or shall at least
13 include. Otherwise we would assume the conventional meaning
14 of the verb include operates here and that would limit us to
15 the procedures, qualifications and regulations stated in (a)
16 through (m).

17 BY MR. SAVARESE:

18 Q And here we're dealing with (b).

19 A Here we're dealing with (b), yes, so the
20 qualifications.

21 Q And so you're saying, then, that the semantic or
22 obligatory interpretation of this language is that all
23 qualifications must share this characteristic that they are
24 directly and demonstrably related?

25 A According to the semantic interpretation of this

1 language, yes.

2 Q Now, you -- is there -- okay, you just explained why
3 this is not merely an illustration of what may be included.
4 You have referred to the use of the word include in doing so.
5 Why is it that the use of the word include, as it is used
6 here, is not merely permissive or illustrative?

7 A Well, it's not permissive because of the shall,
8 which is a deontic modal expressing strong necessity. That is
9 the interpretation of shall. That's obligatory linguistically
10 because there are other options that we could have used for
11 permissibility. But the include here doesn't include any
12 semantic marking and the common ground that has been
13 established in other areas of the statute shows that when
14 other interpretations of include were intended or when minimal
15 assertions of a verb, for example, were intended, there is
16 syntactically and semantically marking information that draws
17 our attention to that alternative interpretation that was
18 intended, which is not present here.

19 Q But which is present elsewhere within this same
20 statute, chapter of the Nevada Revised Statutes?

21 A Yes. The common ground does establish some other
22 semantic marking in different contexts that would lead us to
23 different interpretations of verbs in those cases that is
24 absent in this case.

25 MR. SAVARESE: Sir, may I have 453D.030.

1 THE COURT: That's the definition section.

2 MR. SAVARESE: That's correct. Subsection 13, if you
3 would.

4 BY MR. SAVARESE:

5 Q And we have a definition of marijuana products. Can
6 you read that to us for the record?

7 A Item 13. "Marijuana products means products
8 comprised of marijuana or concentrated marijuana and other
9 ingredients that are intended for use or consumption, such as,
10 but not limited to, edible products, ointments and tinctures."

11 Q Is that an example of the use of the quantifier?

12 A This -- No, there's no quantifier here.

13 Q No, I mean --

14 A However, it's an example of the use of semantically
15 marking language that qualifies how we should read "such as"
16 in this case.

17 Q Okay. So in this use of the word include, the
18 Legislature has specifically expressed --

19 THE COURT: Counsel, this isn't the legislature,
20 this is Question 2, it's the ballot initiative. Right?

21 MR. SAVARESE: I'm sorry, Your Honor?

22 THE COURT: Isn't this the ballot initiative?

23 MR. SAVERESE: This is the NRS provision.

24 BY MR. SAVERESE:

25 Q That language, "such as, but not limited to," is

1 that to be contrasted for purposes of a linguistic analysis
2 with the mere use of the word shall include?

3 A Yes. This contributes to the common ground that in
4 this case there are other semantic qualifiers that directly
5 and explicitly suggest how we should take the interpretation
6 of "such as." But there are also cases further in the statute
7 that use actually the verb include with similar explicit
8 semantic marking.

9 MR. SAVERESE: May I have 310, subsection 3(b)?
10 453D.310, subsection 3(b).

11 THE COURT: And counsel, this is not from the ballot
12 initiative and it doesn't become effective until next January,
13 this portion of the statute.

14 MR. SAVARESE: Well, this --

15 THE COURT: I understand, but it's not part of the
16 same package of drafting that occurred.

17 MR. SAVARESE: It's verbatim from the ballot
18 initiative.

19 THE COURT: Not so much.

20 MR. SAVARESE: Well, I'm not --

21 THE COURT: But that's okay. From a linguistic
22 standpoint I'm happy to listen to --

23 MR. SAVARESE: Okay.

24 THE COURT: -- why the words at a minimum, including
25 but not limited to, and those kind of things are important in

1 my decision as to how to interpret something. But you are now
2 looking at a statute that has multiple tractors because parts
3 were added by the Legislature but are not effective yet.

4 MR. SAVARESE: I understand, Your Honor.

5 THE COURT: Okay.

6 MR. SAVARESE: I'm just going to point to these few
7 examples which I think are present elsewhere as well.

8 BY MR. SAVARESE:

9 Q With respect to .310 3(b), would you read that for
10 us, please?

11 A Item 3. "A marijuana product manufacturing facility
12 shall not produce marijuana products in any form that: (b)
13 Bears the likeness or contains characteristics of a real or
14 fictional person, animal or fruit, including, without
15 limitation, a caricature, cartoon or artistic rendering."

16 MR. SAVARESE: And then if you would -- may we have
17 the same section .310, 4(b).

18 BY MR. SAVARESE:

19 Q So would you read that for us, please.

20 A 4. "A marijuana product manufacturing facility
21 shall: Affix a label to each marijuana product intended for
22 human consumption by oral ingestion which includes, without
23 limitation, in a manner which must not mislead consumers, the
24 following information."

25 Q That's sufficient. Again, that would be the use of

1 the additional language to indicate that the list provided or
2 the qualification of the description is not intended to be
3 exhaustive, it is illustrative --

4 A Yes.

5 Q -- is that correct?

6 A Yes. From the perspective -- a linguistic
7 perspective, if we're going to get away from semantic meaning,
8 then it requires we make assumptions and inference, so we tend
9 to try to avoid that where possible by explicitly semantically
10 marking what interpretation is intended. And particularly
11 when there's a common ground, meaning that in other parts of
12 our conversation or here in this case it would be a text, we
13 do explicitly semantically denote any unusual or atypical or
14 specific kind of reading that we want to get, then it sets up
15 a contrast with areas where we don't do it where we should
16 just assume that the conventional meaning should be
17 interpreted in that case.

18 Q Let's take a look at .310, subsection 5. Would you
19 read that for us?

20 A "A retail marijuana store or marijuana product
21 manufacturing facility shall not engage in advertising that in
22 any way makes marijuana or marijuana products appeal to
23 children, including, without limitation, advertising which
24 uses an image of a cartoon character, mascot, action figure,
25 balloon, fruit or toy."

1 Q Thank you. Again, we have the addition of "without
2 limitation" in this statutory scheme?

3 A Yes. Here again we see some specific semantic
4 marking of an alternative reading that's intended.

5 Q What would the alternative meaning be when you have
6 -- that you're referring to?

7 A In this case, you mean?

8 Q Yes.

9 A It's saying that it's not limited to these items,
10 but any of those items.

11 Q And as to .200, a contra-distinction, .200 sub 1,
12 "The regulation shall include: (b) Qualifications for
13 licensure that are directly and demonstrably related to the
14 operation of a marijuana establishment," is that -- so your
15 testimony is that that is not similarly limited illustrative,
16 it limits all -- qualifications must be directly and
17 demonstrably related?

18 A From a semantic standpoint there is no additional
19 semantic explication of any other reading in this case.

20 THE COURT: So can I cut to the chase? So in your
21 opinion if the drafters had intended that there be other
22 qualifications considered, they could have included language
23 like but not limited to, at a minimum or without limitation?

24 THE WITNESS: Correct.

25 THE COURT: And they didn't?

1 THE WITNESS: And they didn't. And so --

2 THE COURT: So you have an opinion based upon them
3 not including that additional phrase?

4 THE WITNESS: Correct. Correct.

5 THE COURT: Okay.

6 THE WITNESS: Correct.

7 BY MR. SAVARESE:

8 Q Let's turn, if we may, to the regulation, NAC 453D
9 and specifically I will direct your attention to Section 272
10 of that regulation. Now, here we have the Department of
11 Taxation's regulation wherein qualifications or rankings of
12 applications are set forth.

13 A Yes.

14 Q You will note that in subsection 1, (a) through (I)
15 those are listed. Now, in terms of semantic principles,
16 meaning the obligatory meaning of these terms and phrases, if
17 we go to sub 1, sub (a), "Whether the owners, officers or
18 board members have experience operating another kind of
19 business that has given them experience which is applicable to
20 the operation of a marijuana establishment." Is that right,
21 did I read that correctly?

22 A Yes.

23 Q Did I?

24 A As far as I can tell, yes.

25 Q Okay. Now, is there any semantic evidence there of

1 that this is a criteria which directly and demonstrably
2 relates to the operation of a marijuana establishment?

3 A Yes. Such a relationship is semantically explicated
4 in (a).

5 Q And how so?

6 A It says explicitly by its assertion that whether
7 they have experience operating another kind of business that
8 has given them experience that is applicable to the operation
9 of a marijuana establishment, thereby establishing a direct
10 and demonstrable link semantically.

11 Q Let's go to (b). "The diversity of the owners,
12 officers or board members of the proposed marijuana
13 establishment." Did I read that correctly?

14 A Yes, you did.

15 Q Is there any --

16 MR. GENTILE: Can the record reflect specifically
17 what regulation is being read right now, please.

18 THE COURT: NAC 473D.272. Correct?

19 MR. SAVARESE: That's correct.

20 THE COURT: I can tell because it was up on the
21 screen.

22 BY MR. SAVARESE:

23 Q How about that criterion, is there anything -- is
24 there semantic evidence that that -- to support the notion
25 that that criteria is directly and demonstrably related to the

1 operation of a marijuana establishment?

2 A There is no semantic assertion in (b) of any direct
3 and demonstrable link, or any link to anything doing -- within
4 the operation of a marijuana establishment as far as I can
5 see.

6 Q Let's go to (c). "The educational achievements of
7 the owners, officers or board members of the proposed
8 marijuana establishment." Is there any semantic evidence in
9 that assertion that would bring that criterion within the
10 scope of that which is directly and demonstrably related to
11 the operation of a marijuana establishment?

12 A No, there's no semantic explication in that case,
13 either.

14 Q How about subsection (d): "The financial plan and
15 resources of the applicant, both liquid and illiquid," is
16 there any semantic evidence --

17 A There's not anything semantically denoted in that
18 phrase.

19 Q -- linking that to the requirement of directly and
20 demonstrably related to a marijuana establishment?

21 A No.

22 Q How about (e): "Whether the applicant has an
23 adequate integrated plan for the care, quality and safekeeping
24 of marijuana from seed to sale," is there evidence, semantic
25 evidence there that is by contrast directly and demonstrably

1 related to the operation of a marijuana establishment?

2 A Yes. It explicitly states the relationship to a
3 marijuana business, or from seed to sale.

4 Q Now let's go to (f): "The amount of taxes paid and
5 other beneficial financial contributions, including, without
6 limitation," -- again, just before I go further, in this
7 instance the Department is using the limiting phrase -- excuse
8 me, using the "without limitation" concept we discussed
9 earlier, in conjunction with the word "including."

10 A Yes, they are.

11 Q "The amount of taxes paid and other beneficial
12 financial contributions, including, without limitation,
13 civic or philanthropic involvement with this State or its
14 political subdivisions by the applicant or the owners,
15 officers or board members of the proposed marijuana
16 establishment." Did I read that correctly?

17 A Yes, you did.

18 Q Is there any semantic evidence in that assertion,
19 in that statement that would indicate that that is within the
20 scope of that which is directly and demonstrably related to
21 the operation of a marijuana establishment?

22 A There is no linguistic expression in this item,
23 either, that would entail a relationship to a marijuana
24 operation.

25 Q There's only a couple more left. We've got (g) now.

1 "Whether the owners, officers or board members of the proposed
2 marijuana establishment have direct experience with the
3 operation of a medical marijuana establishment or marijuana
4 establishment in this State and have demonstrated a record of
5 operating such an establishment in compliance with the laws
6 and regulations of this State for an adequate period of time
7 to demonstrate success." Now, by contrast does that criterion
8 -- is that criterion within the scope of that which is
9 directly and demonstrably related to the operation of a
10 marijuana establishment by application of semantic principles?

11 A I think this item could be the poster child for
12 semantic explication, in fact, of that.

13 Q Okay. So this is clearly --

14 A Yes.

15 Q -- within the scope of that which is directly and
16 demonstrably related?

17 A There's no ambiguity here about the relationship.
18 Correct.

19 Q (h): "The experience of key personnel that the
20 applicant intends to employ in operating the type of marijuana
21 establishment for which the applicant seeks a license." Is
22 there anything there semantically that brings that within the
23 scope?

24 A There's no semantic explication of how this relates
25 directly and demonstrably to the operation of a marijuana

1 business per se, no.

2 Q And why is that, with respect to the use of the word
3 "experience"?

4 A Because it doesn't specify an experience directly and
5 demonstrably related to the operation of a marijuana business,
6 just experience in general. That's at least what's
7 semantically entailed there.

8 Q Whereas the previous provision or (g) talks about
9 experience in the operation of a medical marijuana or other
10 marijuana establishment?

11 A Correct. So it actually entails or semantically
12 requires that the experience be relevant to a marijuana
13 business, which is what --

14 Q And finally subsection (I) at long last, finally:
15 "Any other criteria that the Department determines to be
16 relevant." Now, how about that one, is there anything there
17 that would semantically indicate that's within the scope --

18 A No.

19 Q -- of that which is directly and demonstrably
20 related?

21 A No. In particular (I) does not show any semantic
22 direct and demonstrable relationship that's asserted. And in
23 addition, it also identifies a new set, a set by the noun
24 phrase "any other criteria that the Department determines to
25 be relevant."

1 Q What's the effect of the use of the word "any"?

2 A Any is what we call a quantifier in linguistics,
3 which is a linguistic expression that tell us how to look at
4 the range of entities in a set that would satisfy the
5 proposition expressed. In plain language what that means is
6 it tells us when we have a set of items that a phrase denotes
7 or tells us about, the quantifier tells us how many of those
8 items should be possibly identified in the world as
9 potentially satisfying that set.

10 Q Is that what you would call an open set?

11 A Well, yes, it is an open set because there's no
12 semantic explication anywhere in the text of which criteria
13 the Department would determine to be relevant. In that way
14 it's a very unrestricted set, but it is a set that's denoted
15 but an unrestricted set because we don't have a universe of
16 discourse that is set up by the regulations that tells us
17 where to look for the denotation of the members of that set.

18 Q So then would I be correct in saying that it cannot
19 be semantically delimited to the category of that which is
20 directly and demonstrably related to the operation of a
21 marijuana establishment?

22 A That could be a subset of this set, but by logical
23 necessity there would be other members of the set that could
24 also be included that would not be directly and demonstrably
25 related to the operation of a marijuana establishment.

1 Q All right. Now, if we go up to the prefatory
2 language before the list we've gone through and just under
3 subsection 1 itself before we get to (a), let me read that and
4 tell me if I'm reading correctly again here. "If the
5 Department receives more than one application for a license
6 for a retail marijuana store in response to a request for
7 applications made pursuant to NAC 453D.260, and the Department
8 determines that more than one of the applications is complete
9 and in compliance with this chapter -- with this chapter and
10 Chapter 453D of NRS, the Department will rank the applications
11 within each applicable locality for any applicant which are in
12 a jurisdiction that limits the number of retail marijuana
13 stores, in order from first to last based on compliance with
14 the provisions of this chapter and Chapter 453D of NRS and on
15 the content of the applications relating to." And then the
16 list appears. Did I read that correctly?

17 A Yes, you did.

18 Q Now, does that prefatory language serve to limit the
19 list semantically to that which is directly and demonstrably
20 related within the meaning of the NRS provision?

21 A It actually delimits a number of different items
22 that is inclusive of the Chapter 453D of NRS, which I believe
23 is what you refer to as the statute, correct?

24 Q Yes.

25 A But it also says it is subject to this chapter,

1 which includes criteria that are both directly and
2 demonstrably related and those that are not and thereby does
3 not delimit the set to those directly and demonstrably
4 applicable to the operation of a marijuana business.

5 Q So to that extent, then, it's circular in its logic?

6 A It's circular in its reference set. Correct.

7 Q So because it is -- the interpretation of these
8 listed numerated items is subject to compliance with this
9 chapter, that language making it subject to compliance with
10 this chapter does not serve to limit the possible scope of
11 these items, these criteria, to that which is confined to
12 those which are directly and demonstrably related?

13 A That's correct.

14 Q Now, did you also have an opportunity to take a look
15 at the application itself?

16 A I did. I reviewed it.

17 Q Just a blank one?

18 A A blank one. Yes, a blank application.

19 Q A blank application. Section 6.3 of that provision
20 -- excuse me, of the application. Okay. Let me read that and
21 tell me -- I'm almost done, Your Honor. "Applications that
22 have not demonstrated a sufficient response related to the
23 criteria set forth above will not have additional criteria
24 considered in determining whether to issue a license and will
25 not move forward in the application process." Is that what

1 that section says?

2 A It looks like it to me, yes.

3 Q Okay. Now, the use of the phrase "additional
4 criteria," is that an open set?

5 A Well, that denotes a set, certainly. This one is a
6 little different because it has something called a negative
7 logical operator on this sentence.

8 Q It's stated in the negative?

9 A Yes, which negates the assertion of the sentence in
10 this case. And in addition it identifies a set that is
11 restricted to additional criteria.

12 Q And would that have a positive corollary?

13 A Well, certainly. As they say, every negative has a
14 positive, and that is true in linguistics as well. It would
15 be considered the semantic contradiction of this phrase. So
16 every assertion has a contradiction which is the negative of
17 that assertion. And this is the negative of the assertion;
18 therefore the assertion could be positive that applications
19 which had demonstrated a sufficient response related to the
20 criteria set forth above, which was the criteria we were
21 previously discussing, will have additional criteria
22 considered in determining whether to issue a license and will
23 move forward in the application process. So that would be the
24 positive assertion if you remove the negative operators which
25 form the contradiction of this semantic sentence.

1 Q And is there any semantic limitation here on the
2 scope of what additional criteria means?

3 A There is nothing semantically stated that would
4 narrow the set of this criteria in the ways that the other
5 sets were narrowed, so this one is a completely open and
6 unrestricted set, that as long as it is a criteria it would
7 have to be an identified criteria. That's the only
8 restriction on this set.

9 Q Is there anything in this language, this section
10 that would entitle the reader to apprehend what the additional
11 criteria referred to are or may be?

12 A There was nothing set up in what we call the
13 universe of discourse, which is the set of entities or objects
14 referred to in a text or a discourse. That would delimit this
15 in a way that -- beyond that criteria that I should look for
16 as a member of this set.

17 Q All right. Doctor, I want to go back, just a last
18 question for you, my last subject for you would be back to NRS
19 section, chapter, and that would be 453D.200, subsection 6.
20 Do you see that?

21 A Subsection 6, you said?

22 Q Yes.

23 A Yes.

24 Q I'm going to read that and tell me if I'm correct.
25 "The Department shall conduct a background check of each

1 prospective owner, officer and board member of a marijuana
2 establishment license applicant." Did I read that correctly?

3 A Yes, you did.

4 Q Now, again we have -- they use the word "shall,"
5 which is the deontic modal, as you described it?

6 A Correct.

7 Q Making it a mandatory or the highest degree of
8 obligatory interpretation?

9 A Correct. Strong necessity.

10 Q Must be done or action required; right?

11 A Yes. We call it strong necessity.

12 Q And do you have an opinion, based upon the context
13 or the pragmatics and semantics or whatever you'd like to draw
14 from in your opinion as to what the word "each" means in this
15 provision?

16 A Well, each is a quantifier, much like any, and it
17 allows us to understand to which members of a set a predicate
18 or an assertion will apply. And each has a distributional
19 property in addition to its sense of every which requires that
20 whatever is predicated to occur or the verb in question, the
21 action described, must apply to every individual member of the
22 set. So it can't just be some members of the set. So if I
23 said some owner that would be any number less than 50 percent.
24 If I said most owners, that would be any number over 50
25 percent. But if I say each, that requires that every

1 individual of the set must have the same predication occur to
2 it, which here is the background check because it's the
3 syntactic -- it's the prepositional phrase that modifies
4 background check syntactically.

5 MR. SAVARESE: Your Honor, may I consult my
6 colleagues before closing?

7 THE COURT: You may consult with your colleagues.

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

9 THE COURT: Any of the other plaintiffs have any
10 questions?

11 UNIDENTIFIED SPEAKER: No, Your Honor.

12 THE COURT: The State? Mr. Shevorski.

13 MR. SHEVORSKI: Thank you, Your Honor.

14 CROSS-EXAMINATION

15 BY MR. SHEVORSKI:

16 Q Dr. Fridland -- Fridland?

17 A Fridland. Yes.

18 Q Fridland. I apologize.

19 A No worries. Thank you.

20 Q My name is Steven Shevorski. I work for the Office
21 of the Attorney General. It's a pleasure to meet you. Do you
22 have an estimate about how long you just testified for?

23 A No, I don't. Maybe 30 minutes.

24 Q Maybe 30 minutes about the meaning of a particular
25 statute and various -- actually various parts of statutes and

1 regulations. And you used some terms, pragmatics, semantics,
2 common ground as part of your testimony; correct?

3 A Yes.

4 Q And you were giving a linguistic opinion about the
5 meaning of words in the statute; correct?

6 A Correct. A linguistic analysis.

7 Q Linguistic -- thank you. Linguistic analysis. So
8 you'd have to agree with me, would you not, that the statute
9 you're interpreting is ambiguous, because otherwise we
10 certainly wouldn't need a linguistic analysis to explicate it?

11 A Yes, I think it would depend. I'm giving testimony
12 as to the semantic or obligatory meaning. Whether you have
13 inferences that are in disagreement with the semantic meaning
14 is what would give rise to ambiguity.

15 Q And the common ground that we're in today, this is a
16 court.

17 A Correct.

18 Q And we have a judge to interpret the law, the
19 unambiguous law. We have experts to assist triers of fact.
20 And I assume you're not withdrawing your opinion. You're an
21 expert giving opinion on facts, you're not giving an opinion
22 of law?

23 A Correct. I'm giving a linguistic opinion.

24 Q And so you'd have to agree with me that there's a
25 question of fact about the meaning of these words you've just

1 interpreted; otherwise you'd be doing the job of the judge;
2 right?

3 A Correct. There's certainly obviously some
4 disagreement or no one would be here.

5 THE COURT: And there's lots of people here.

6 THE WITNESS: There definitely are.

7 BY MR. SHEVORSKI:

8 Q Now, you prepared a report in this matter?

9 A I did.

10 Q Before your testimony today, did you review that
11 report?

12 A I did.

13 Q It says, "For my analysis I was asked to consider
14 the language of 453D.210 and the language of regulation
15 453D.272." Did I read that correctly?

16 A Yes, I would imagine so.

17 Q And you have to agree with me that that's a mistake;
18 right, because your comparison is NRS 453D.200 1(b) with the
19 regulation 453D.272?

20 A Well, I think I looked at that section most
21 specifically, but I did read the entire statute and I looked
22 at common ground elsewhere in the statute, so I think it does
23 encompass it. But certainly I think those were the relevant
24 sections in particular that I reviewed, yes.

25 Q 453D.200, not .210?

1 A Probably not. I'm not that familiar with all the
2 numbers, but .200 1(b), which is what I just discussed is what
3 I spent the most time on, yes.

4 Q Okay. Now, ambiguous language -- so we're talking
5 about the common ground here when we're in this courtroom.
6 Who is entitled to great deference with respect to their
7 opinion of the statute in an instance where it's not a pure
8 issue of law?

9 A I'm not sure exactly. Are you talking about in this
10 -- in the context of the courtroom or in the context --

11 Q In the -- we're in the courtroom. You're giving an
12 opinion on the meaning of a statute?

13 A Yes.

14 Q And you've testified that there's a dispute about
15 the meaning of the statute and you're giving a linguistic
16 opinion on one side of that dispute?

17 A Right.

18 Q Amongst the players here, whether it be the
19 plaintiffs who have hired you, the State who drafted the
20 regulations --

21 A Correct.

22 Q -- who is entitled to great deference about their
23 opinion of the statute?

24 A Well, I'm just asked to consult on linguistic
25 matters. I would assume that is the matter of the court and

1 the judge to determine the outcome of this case.

2 Q So with respect to the meaning of NRS 453D.200 1(b),
3 would you agree with me that it's the State who is entitled to
4 great deference as to its interpretation of that statute?

5 A I --

6 MR. SAVARESE: Objection, Your Honor, that's a legal
7 conclusion.

8 THE COURT: Overruled. You can answer if you can.
9 If you don't know the answer, that's okay, just tell us.

10 THE WITNESS: I'm not exactly sure what you mean,
11 since I am not usually in legal matters. In terms of
12 interpretation it's the reader, generally, who has the right
13 of interpretation, and we must rely on semantic entailments,
14 things that are obligatorily there. And then we have to rely
15 on reasonable common ground inference. We can't just
16 arbitrarily decide what things mean, no matter who we are.
17 But I don't know exactly in terms of the question you're
18 asking. I'm really not sure how to answer that. But I guess
19 there probably is some requirement of somebody specific
20 interpreting this. I just don't know it because I'm not a
21 lawyer. Thank goodness.

22 Q Well, you know what Shakespeare said?

23 A Many things.

24 Q He wasn't a fan.

25 THE COURT: That was satire in that part, if you

1 read the whole play.

2 MR. SHEVORSKI: I'm aware, Your Honor.

3 THE COURT: All right. I'll make you do Shakespeare
4 in the law if you don't get it.

5 MR. SHEVORSKI: Please don't.

6 BY MR. SHEVORSKI:

7 Q Okay. Do you still have -- did you bring your book
8 with various statutes with you and do you still have it in
9 front of you?

10 A I do, yes, with the regulation and the statute I
11 think it includes.

12 Q Do you have NRS 453D.200?

13 A Yes. That was the one we were talking about
14 previously, I believe, was it not?

15 THE COURT: It is.

16 THE WITNESS: Two zero zero. Yes.

17 THE COURT: With subparts (a) through (m).

18 THE WITNESS: Got it.

19 MR. SHEVORSKI: Thank you, Your Honor.

20 BY MR. SHEVORSKI:

21 Q As part of your opinion today, did you read the
22 preamble to the statute?

23 A That would be the duties of the Department section,
24 the black -- the dark?

25 Q Right. The one in black.

1 A Yes.

2 Q And I'll read it for you. "Duties of Department
3 relating to regulation and licensing of marijuana
4 establishments." And there's a semicolon. "Information about
5 consumers. Period. And then sort of a parenthetical: "This
6 section was proposed by an initiative petition and approved by
7 the voters at the 2016 general election and therefore is not
8 subject to legislative amendment or repeal until after
9 November 22, 2019.)"

10 A Yes.

11 Q Did I read that correctly?

12 A I think you did.

13 Q Okay.

14 A Nice job.

15 Q With respect to the phrase, "initiative petition,"
16 how did that affect your opinion with respect to the meaning
17 of NRS 453D.200 1(b)?

18 A Well, because this is actually bracketed, it gives
19 the impression that it is not part of the semantic material
20 that would be read by the reader. However, an initiative
21 petition would be interpreted as the petition that has begun
22 this process, I would imagine, although, again, I'm not a
23 legal expert. That would be the conventional meaning
24 associated with those terms.

25 Q The fact that this law was proposed as an

1 initiative, did that affect your analysis as to the meaning,
2 or how we should approach the meaning, rather, of NRS 453D.200
3 1(b)?

4 A No, it didn't affect my analysis. I analyzed this
5 from a semantic perspective of what was directly attached to
6 the meaning of the words.

7 Q Now, previously you talked about the statute dealing
8 with definitions, correct? And that's NRS 453D.030.

9 A I think just in terms of it providing an example of
10 semantic qualification.

11 Q Can you turn to subpart 15, please?

12 A Oh, is that item 15 in that section?

13 Q Yes. I'm sorry. Are you there?

14 A Yes.

15 Q Can you read that out loud, please?

16 A 15. "Marijuana testing facility means an entity
17 licensed to test marijuana and marijuana products, including
18 for potency and contaminants."

19 Q It uses the word "including" there, doesn't it?

20 A Yes, it does.

21 Q Okay. It's not your position that a marijuana
22 testing facility can only test for potency and contamination
23 is it?

24 A Honestly, I don't have any clue about what a
25 marijuana testing facility would test for, and so I don't know

1 what other things would be necessary to test for, just because
2 I'm not familiar with it.

3 Q And it uses the word "including"?

4 A It does.

5 Q Is there any -- strike that. Would you please turn
6 to Exhibit 2009? And they're in the black binders.

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

8 THE COURT: You may.

9 THE CLERK: It's in the cart -- [inaudible].

10 MR. SHEVORSKI: Thank you.

11 THE COURT: And it's in the second black binder. It
12 should be the first document.

13 THE WITNESS: Okay, thank you.

14 MR. SHEVORSKI: You're welcome.

15 THE WITNESS: 2009?

16 MR. SHEVORSKI: Yes. It's the first tab there.

17 BY MR. SHEVORSKI:

18 Q All right. Are you at 2009, Doctor?

19 A Yes.

20 Q And have you seen this document before?

21 A I have not.

22 Q This is not part of the material that my friend, Mr.
23 Savarese, asked you to review?

24 A No, it was not.

25 Q Can you go to page 2608, if you would be so kind?

1 A Two six --

2 THE COURT: It's almost at the end.

3 THE WITNESS: Almost there.

4 MR. SHEVORSKI: No, no rush.

5 THE WITNESS: Okay. I believe I'm there.

6 BY MR. SHEVORSKI:

7 Q Okay. And do you see who the -- where it says
8 Individual Sponsors?

9 A Yes.

10 Q And under -- so that's under part two there. I'll
11 call it part two. That's probably not part two, but I'll just
12 call it two. And it says, "John Ritter, Nevada Dispensary
13 Association and The Grove." Do you know who Mr. Ritter is?

14 A I don't. I'm sorry.

15 Q Were you in the courtroom when Mr. Ritter was
16 testifying earlier this week or Monday?

17 A No. I actually am from Reno. I'm just here --

18 Q Okay.

19 A -- hopefully short and sweet.

20 Q Understood. I'm doing my best. Can you look at
21 part three there where it says in bold, "Describe the
22 recommendation" and read that to yourself?

23 A Okay.

24 Q Have you finished?

25 A Yes. It was cursory reading.

1 Q What's your understanding of that paragraph?

2 A That essentially that these are criteria, the ones
3 listed below here, that they would like to have included in
4 the numerically scored bidding process, as well as the
5 qualifications for licensure directly and demonstrably related
6 to the operation of a marijuana establishment.

7 Q And I'll represent to you that Mr. Ritter has
8 testified here earlier and he is a representative of a company
9 called TGIG, also known as The Grove, and they are represented
10 by Mr. Gentile and Mr. Savarese. Now, if you look at subpart
11 -- so below that at part five it starts, "Owners, officers."

12 A Okay.

13 Q And it reads, "Owners, officers and/or board members
14 have a demonstrated track record of employing Nevadans and
15 paying state and local taxes and fees in Nevada. Heavily
16 weighted." Did I read that correctly?

17 A Yes.

18 Q Now let's look at part six. "Owners, officers and/or
19 board members have a demonstrated track record of giving back
20 to the community through their civic and/or philanthropic
21 involvement in Nevada. Heavily weighted." Did I read that
22 correctly?

23 A I believe so.

24 Q Is it your opinion that those two recommendations
25 would violate NRS 453D.200, subpart 1(b), the directly and

1 demonstrably category?

2 MR. SAVARESE: I'm going to object, Your Honor.
3 It's a legal conclusion.

4 THE COURT: Overruled. You can answer.

5 THE WITNESS: There is no semantic assertion in five
6 or six of that relationship. I don't know what it violates
7 because I'm not a lawyer, again, but five and six do not
8 semantically entail a relationship.

9 BY MR. SHEVORSKI:

10 Q So Mr. Ritter would disagree with you because he
11 recommended this; correct?

12 A I'm not sure if he'd disagree with me, but that's
13 the semantic analysis here.

14 Q From what this document says, it says he's one of
15 the sponsors of this particular criteria?

16 A Maybe. Yes, it does say that.

17 Q Let's go through a little bit of your background.

18 THE COURT: So I have to stop at noon because I have
19 a conference call in another case. I'm happy to start up
20 again at 1:00, but we're nine minutes from there, so I'm just
21 warning you.

22 MR. SHEVORSKI: I'll be quick, Your Honor.

23 THE COURT: Uh-huh.

24 MR. SHEVORSKI: Shevorski quick.

25 THE WITNESS: Are we done with this binder?

1 MR. SHEVORSKI: Yes.

2 THE WITNESS: Thank you.

3 BY MR. SHEVORSKI:

4 Q Have you ever published any books or papers on
5 linguistic approaches to interpreting legal text?

6 A I have published several articles on courtroom
7 testimony and how narrative structure can be altered by the
8 attorneys.

9 Q I appreciate that and I know about those
10 publications, but I'm asking about a linguistic approach to
11 legal texts?

12 A No, I have not.

13 Q Have you ever been qualified as an expert before on
14 offering an opinion to use a linguistic approach to a legal
15 text?

16 A No, I have not.

17 Q Have you ever read any books on approaches to
18 statutory construction?

19 A Have I -- I'm sorry?

20 Q Read any books on approaches to statutory
21 construction?

22 A No. Luckily, I have not.

23 Q Okay. Do you know who Fred Friendly is?

24 A I do not.

25 Q Bryan Garner?

1 A I do not.

2 Q Cass Sunstein?

3 A No.

4 Q Have you read a case where a judge has offered an
5 interpretation of a statutory text?

6 A No, I have not.

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

8 THE COURT: Any of the other defendants in
9 intervention have questions before I break for lunch in seven
10 minutes?

11 CROSS-EXAMINATION

12 BY MR. KOCH:

13 Q Ms. Fridland, thank you for your patience. I know
14 you've been here for a few days, so hopefully we'll let you
15 get out of here. Let me give you an example or a hypothetical.
16 You're working for the Encyclopedia Britannica and you show up
17 one day and the editor says this encyclopedia shall include
18 the names of all Nobel Prize winners. You come back, turn in
19 your encyclopedia and it has just the names of those Nobel
20 Prize winners. Have you completed that assignment?

21 A Yes, I would have completed it in that context. But
22 since pragmatics requires context dependent meaning, because I
23 understand what your question is, then that's a different
24 context, so different meanings would obtain in terms of the
25 interpretation.

1 Q So the context, you would believe that the
2 encyclopedia would include not only the names of Nobel Prize
3 winners but some other information; correct?

4 A Right, based on what an encyclopedia is defined as.

5 Q Right.

6 A And the common ground of knowledge about what an
7 encyclopedia requires. Then, yes, in that case I would have
8 the common ground to use to form an opinion on whether that
9 was complete.

10 Q You're a professor, you sometimes assign papers to
11 your students to write?

12 A Not just sometimes.

13 Q Often? Okay. You assign your students a paper and
14 you tell them your paper that you turn in must include
15 citations to any references that you read in preparation for
16 this paper. A student comes back to you and hands in just a
17 list of those citations. Would you give them an A+ on that
18 paper?

19 A Without the paper?

20 Q Right.

21 A Well, yes, again because of context I would know
22 that a paper also means that there is an analysis portion and
23 the citations are a section of that.

24 Q And if that student said, well, I didn't understand
25 it that way, my personal interpretation was different, what

1 would you have expected them to have done before they started
2 on that project?

3 A Have taken another course in their lifetime which
4 would have prepared them for going to college.

5 Q Yeah. And what if they had questions on
6 understanding exactly what you were referring to, would you
7 have expected them to ask those questions before they turned
8 in their paper?

9 A Yes. And I provide materials to all my students
10 that outline the sections of a paper and is taken as the
11 authority on how those papers should be written. It includes
12 both a section that's the analysis and a section on citations,
13 so it would be clear.

14 Q One last example. You referenced a section of the
15 statute that referred to the Department shall conduct a
16 background check. Do you remember that?

17 A I do.

18 Q If that statute had said shall conduct a background
19 check which shall include fingerprints of any owner, what
20 would you have understood that requirement to entail?

21 A That shall include fingerprints of --

22 Q Of any owner or applicant.

23 A Then it would require fingerprints of all of them.

24 Q Right. Would it require only fingerprints that
25 would be the background check?

1 A I'm sorry, say the sentence again.

2 Q If it said shall include fingerprints of any owner,
3 would you expect then that that statute would be anticipating
4 just the fingerprints to be turned in?

5 A As stated semantically, yes.

6 Q So nothing else besides fingerprints?

7 A Not if it's stated in that way.

8 Q And if the Department conducted a further background
9 check, would they be violating that statute?

10 A If it wasn't explicated elsewhere. I don't know
11 that much about how you construct statutes or what the
12 limitations are there, but in that specific case of the
13 assertion that you made, that assertion would only require
14 that they do the background check that includes the
15 fingerprints.

16 Q So a lot of other factors have to be taken into
17 account before you --

18 A The common ground.

19 Q The common ground.

20 A Yes.

21 Q Including other reports or prior information that
22 was promulgated maybe by a task force. Would that be one
23 thing to take into account in common ground?

24 A Well, again, as I think your colleague said, I don't
25 have any experience on statutory creation, so I don't know how

1 that works in terms of what can inform the common ground
2 beyond the statute. But from my perspective when you have a
3 statute, as reader of that statute I would not have access to
4 any of that other material and therefore would be constrained
5 to the statute interpretation itself. I would assume most
6 other readers coming to a statute would have that same
7 limitation unless they are lucky enough to be employed in the
8 legal field. But since most of us aren't, and that is who the
9 statutes are written by and for, then my assumption would be
10 they would be limited to only the interpretation there in the
11 text.

12 MR. KOCH: No further questions. I'll let the judge
13 get to her conference.

14 THE COURT: Any other defendants in intervention
15 have questions?

16 MR. HYMANSON: Briefly, Your Honor.

17 THE COURT: You're not a defendant -- oh, yeah, you
18 are. You're a plaintiff. You're a defendant, aren't you?
19 You're sitting next to Mr. Parker, but you are a defendant in
20 intervention, Mr. Hymanson. Can you do it in a minute or
21 less?

22 MR. HYMANSON: I can do it in under five questions,
23 Your Honor.

24 THE COURT: That's not a minute or less, Mr.
25 Hymanson.

1 Ma'am, I'm really sorry, but I have to break for
2 lunch because I have a 12:00 o'clock conference call, so we'll
3 see you back at 1:00 o'clock.

4 THE WITNESS: Okay. I actually have a plane that I
5 must catch, so I might have to come back.

6 THE COURT: What time is that?

7 THE WITNESS: It's at 2:30.

8 THE COURT: That may be a problem. So I'll see you
9 guys at 1:00.

10 (Court recessed from 11:59 a.m. until 1:11 p.m.)

11 (Court was called to order)

12 THE COURT: Sorry I'm late, counsel. I was working.

13 Next witness? It's my understanding that you all
14 agreed to excuse certain of the witnesses. (No response).
15 Yes, Judge, we agreed to excuse the last witness so she didn't
16 miss her plane.

17 MR. SHEVORSKI: That's correct, Your Honor.

18 THE COURT: Okay. I was trying to get it on the
19 record. Your next witness?

20 MR. CRISTALLI: Your Honor, plaintiffs call Mike
21 Viellion.

22 MIKE VIELLION, PLAINTIFF'S WITNESS, SWORN

23 THE CLERK: Please be seated. Please state and
24 spell your name for the record.

25 THE WITNESS: First name Mike, last name Viellion,

1 V-I-E-L-L-I-O-N.

2 THE COURT: Hold on a second. I have to go take a
3 phone call. I'll be right back.

4 THE WITNESS: Sure.

5 (Pause in the proceedings)

6 THE COURT: Sir, before we get started, you'll
7 notice there's a pitcher next to you that has water in it. If
8 you should need some more, let us know. There are also a ton
9 of exhibit binders around you. You may get referred to some.
10 And there are M&Ms in the dispensers if you should need them.

11 THE WITNESS: Thank you, Your Honor.

12 THE COURT: You may continue, Mr. Cristalli.

13 MR. CRISTALLI: Thank you, Your Honor.

14 DIRECT EXAMINATION

15 BY MR. CRISTALLI:

16 Q Mike, could you state your educational background?

17 A I graduated from UNLV with an undergraduate degree
18 in Business Management and I graduated from the Boyd School of
19 Law in 2004 with a law degree.

20 Q After you graduated from the Boyd School of Law,
21 what did you do?

22 A I went to work directly out of law school with my
23 partner's real estate firm as a broker salesperson and since
24 have started a few development companies and a construction
25 company.

1 Q So with your law degree you went into business?

2 A Correct.

3 Q Tell us a little bit about your business, your real
4 estate and commercial businesses?

5 A So we develop retail bars on the Strip, we develop
6 fast-food restaurants. We've also built on the construction
7 side many different projects, from office to industrial to
8 residential.

9 Q During the course of your work, either in aspects of
10 construction, residential or commercial real estate, have you
11 ever been involved in any type of competitive bidding
12 processes?

13 A Sure. In all of the phases, obviously most
14 frequently on the construction side when you're a general
15 contractor you have the benefit of hosting the bid, bidding
16 process for your subcontractors and then participating as a
17 competitive applicant to the owner or the owner's third party
18 representative.

19 Q So when you act as a host to your subcontractors,
20 I'm assuming that you want to make sure that the process in
21 terms of the subs bids are fair and transparent?

22 A Absolutely. In order to maintain, you know, the
23 integrity of a fair and equitable process, you want to make
24 sure everybody is on a level playing field as far as
25 information. So if something were to change as far as scope

1 of work or, you know, budgeting, any information, you provide
2 that to everybody on your bid list.

3 Q So during the course of a sub bidding a particular
4 project, I'm assuming that questions arise by a particular sub
5 and they ask you as the general contractor to provide some
6 guidance, provide some answers with regard to their questions.

7 A Most of the time.

8 Q And what do you do when a sub asks a question about
9 particular contract or project and that question may -- or the
10 answer to that question may give a competitive advantage to
11 the person who is bidding that particular project?

12 A It depends on the situation, but it's always
13 disseminated to everyone on your bid list. Most of the time
14 it can be as informal as, you know, an email list serve, but
15 on the fancier projects -- I have a B2-1 limited contractor's
16 license, so some projects are million dollars, some are, you
17 know, twenty million. On the bigger projects there's usually
18 an iPad or something that updates, you know, with a push that
19 you let everybody know.

20 Q So if a question comes in that you want to answer
21 for a particular sub and you think that that answer could
22 provide a benefit to the rest of the subs, you would provide
23 that information to all of your subs bidding the contract?

24 A Absolutely.

25 Q Okay. Did there come a point in time when you got

1 involved in the marijuana industry in 2014?

2 A Yes. So we formed GBS Nevada Partners. We operate
3 a retail dispensary. In 2014 I was one of the original
4 owners.

5 Q So you were involved from the original medical
6 marijuana initiative?

7 A Yes.

8 Q Or legislative initiative with regard to that?

9 A Yes.

10 Q Okay. And what is your current role at GBS Nevada?

11 A In early 2017 I became the managing partner of GBS
12 Nevada Partners. As far as role, I oversee the leadership
13 team for daily operations and I have a more direct role in
14 compliance and finance and strategic growth for the company.

15 Q So you deal directly with oversight of your
16 management team for GBS Nevada?

17 A Yes.

18 Q Okay. And in that capacity, in that role you would
19 have familiarity with the application process in the 2018
20 licensing period?

21 A Yes. I'm the point of contact on our submitted
22 application and I assisted our attorney in putting together
23 the applications and submitting them to the State.

24 Q Okay. And so you're familiar with the application?

25 A Yes.

1 Q And you're familiar with the content of the
2 information you provided in the application to the Department
3 of Taxation?

4 A Yes.

5 Q Okay. What jurisdictions did you apply in for the
6 2018 licensing process?

7 A At a cost of \$5,000 each, we applied for the City of
8 Henderson, the City of North Las Vegas, unincorporated Clark
9 County and two licenses in the City of Las Vegas.

10 Q And you did not receive any licenses under the 2018
11 application?

12 A Correct.

13 Q What is your -- what was your understanding, the
14 requirements relating to the geographic locations for each
15 jurisdiction that you applied in?

16 A As a matter of fact, the reason we submitted two
17 applications in the City of Las Vegas was because we were --
18 we couldn't decide between two specific locations that we had
19 secured. It's clear to me the application that -- in several
20 different spots it requests exact information regarding
21 location specific to your proposed location, and I believe the
22 statute and the administrative code confirms that.

23 Q And you would know that because you were directly
24 involved with that portion of the application because of your
25 construction and real estate background?

1 A Correct. I secured the LOIs myself.

2 Q So for each location, for each jurisdiction you
3 applied for a license in, you went and secured LOIs?

4 A Yes.

5 Q Okay. And what other information did you believe
6 was necessary for you to present as much information as you
7 possibly could to the graders to give a persuasive
8 presentation as it related to location and building, so forth
9 and so on?

10 A I mean, any site-specific information that, you
11 know, you would go through in the course of development in
12 terms of, you know, a site plan, general floor plan, in this
13 case a general security plan that was specific to the
14 location, construction budget, operating pro formas.

15 Q And you thought that was important?

16 A Certainly. The application called for it, as far as
17 I'm concerned.

18 Q Okay.

19 MR. CRISTALLI: Can we -- Shane, can we pull up NRS
20 453D.210 (b).

21 THE WITNESS: Is there a paper portion or is it
22 going to come up here?

23 I.T. TECHNICIAN: B, you said?

24 MR. CRISTALLI: B. I'm sorry. As in Boy.

25 THE WITNESS: It's going to come up here or paper?

1 MR. CRISTALLI: Yeah, I hope so, eventually.

2 THE COURT: We're hoping.

3 MR. CRISTALLI: That's the plan. 453D.210(b).

4 Your Honor, may I just make sure I have the right
5 information here? Yes.

6 BY MR. CRISTALLI:

7 Q Do you see that section?

8 A Yes.

9 Q Okay. And specifically NRS 453D.210 references
10 "Acceptance of applications for licensing; priority in
11 licensing; conditions for approval of application; limitations
12 on issuance of licenses to retail marijuana stores; competing
13 applications." Can you read out loud subsection (b)?

14 A "The physical address where the proposed marijuana
15 establishment will operate is owned by the applicant or the
16 applicant has the written permission of the property owner to
17 operate the proposed marijuana establishment on that
18 property."

19 Q So that provision in the NRS would be supportive of
20 your understanding that you had to provide specific locations
21 for each jurisdiction that you applied in?

22 A Yes.

23 Q Okay.

24 MR. CRISTALLI: Shane, can we go to NAC453D.268,
25 specifically 2(e).

1 BY MR. CRISTALLI:

2 Q So NAC453D.268 is the "Submission of application by
3 person who holds medical marijuana establishment registration
4 certificate for marijuana establishment of same type or
5 different type; submission of application by person in
6 response to request for applications." Now, going down to
7 2(e), can you -- well, 2 states, "An application on a form
8 prescribed by the Department. The application must include,
9 without limitation." And could you read (e)?

10 A "The physical address where the proposed marijuana
11 establishment will be located and the physical address of any
12 co-owned or otherwise affiliated marijuana establishments."

13 Q And this is the regulation; correct?

14 A Correct.

15 Q Okay. And it's your understanding based on reading
16 of that that you were required to put information specific to
17 locations as it related to each jurisdiction that you applied
18 for a retail license in?

19 A Yes.

20 Q And going back a little bit, you wanted to be as
21 detailed as you possibly can so that the scorers understood
22 how much effort went into the process of selecting a location,
23 making sure all of the specifications were outlined?

24 A Yes. The application calls for specific
25 encouragement in the details.

1 Q Okay. Let's go to the application. Exhibit 5,
2 specifically page 9, Section 4, starting with -- in the second
3 paragraph starting in the second sentence, "Therefore." The
4 application starts --

5 THE COURT: So this is on Bates number 20?

6 MR. CRISTALLI: I'm sorry, I don't have the Bates
7 number, Your Honor.

8 UNIDENTIFIED SPEAKER: That's correct.

9 MR. CRISTALLI: Yes.

10 BY MR. CRISTALLI:

11 Q It states, "Therefore, applicants are encouraged to
12 be as specific as possible regarding the services provided,
13 geographic location, and information submitted for each
14 application criteria or category." It says that; right?

15 A Yes.

16 Q What's your understanding of that language in the
17 application for the 2018 retail license?

18 A My understanding is the way we filled it out, that
19 specific proposed locations are required.

20 Q Okay. Proposed locations. In addition to that it
21 talks a little bit about services provided, geographic
22 location, information submitted. In addition to the location,
23 you also included floor plans; correct?

24 A Yes.

25 Q You also included plans for security; right?

1 A Yes.

2 Q Construction budgets?

3 A Specific to each location. Correct.

4 Q And specific to each location, estimated operating
5 pro formas?

6 A Yes, specific to each location. Yes.

7 Q And let's just talk about that. As it relates to
8 those categories which you submitted for a scoring and
9 consideration, each -- all of the information you provided --
10 not all, but a portion of the information you provided was in
11 fact different as it related to jurisdiction to jurisdiction
12 to jurisdiction that you applied in?

13 A Yeah. I mean, absolutely. It was a situation where
14 if you had a proposed location on or near the resort corridor
15 your expected sales would be different than if you had a
16 proposed location somewhere far away in the suburbs.

17 Q Security plans would be different?

18 A Relative to each floor plan, absolutely.

19 Q Size of the building would be different?

20 A Theoretically you would base the size of the
21 building on how much you think you could sell, so yeah.

22 Q Impact on the community may be different?

23 A Absolutely. I mean, obviously the impact near the
24 resort corridor is going to be different than the impact in,
25 you know, suburban Vegas for sure.

1 Q Budgets will be different?

2 A I mean, absolutely, depending on the build.

3 Q And you -- excuse me. And you as an applicant
4 considered all of that and presented your application in a way
5 that had very specific information?

6 A Yes.

7 Q Let's go to page 13 of the application, specifically
8 5.3.3, which is tab 3. This is the unidentified portion of
9 the application, I believe. That section references building
10 establishment information. It goes on to say, "Documentation
11 concerning the adequacy of the size of the proposed
12 recreational marijuana establishment to serve the needs of
13 persons who are authorized to engage in" -- a marijuana
14 establishment to serve the needs of the persons -- I'm sorry
15 -- "in the use of marijuana must be included in this tab. The
16 content of this response must be in a non-identified format
17 and include general floor plans with all supporting details."
18 Then it goes on to note, "The size or square footage of the
19 proposed establishment should include the maximum size of the
20 proposed operation. The start-up plans and potential
21 expansion should be clearly stated to prevent needless
22 misunderstanding and surrendering of certification."

23 Again, your understanding in reading of that
24 provision in the application would suggest that you wanted to
25 be as detailed as you possibly could and as specific as you

1 possibly could with regard to the jurisdictions that you were
2 applying in?

3 A Yes. I think that's one of the many places of the
4 application that refers to plan specific information, I think.

5 Q Okay. Going down to tab 4, specifically 5.3.4.3, it
6 talks about procedures to insure adequate security measures
7 for building security. Again, the security measures would be
8 specific to the building in the jurisdiction that you're
9 applying in and its surroundings. Would that be safe to say?

10 A It would definitely have an affect and the floor
11 plan is going to have an affect. You're going to have -- do a
12 different security plan depending on where your vault is,
13 depending on how your cameras lay out, depending on where your
14 entrance is, depending on a lot of things that are going to be
15 building and site specific.

16 Q Going on to tab 6, "Operations and Resource Plan,"
17 specifically 5.3.6.1, it talks about a detailed budget for the
18 proposed establishment, including pre-opening and first year
19 operating expenses. Your understanding, again, is that was
20 specific to the building type that you put into the
21 jurisdictions that you are applying for. Would that be
22 accurate?

23 A Yeah, especially with regard to the operating
24 expenses. Obviously as a retail operator your expenses are
25 going to be different depending on the volumes you would

1 determine from each location. You're going to -- I mean,
2 that's the nature of the retail business is location.

3 Q How does the budgets change?

4 A Well, from a construction standpoint each
5 jurisdiction would have different permitting fees. You know,
6 each jurisdiction varies a little bit on the construction
7 side. And cost of construction, close to the Strip you pay
8 the Strip tax. You know, it's just going to depend on
9 location.

10 Q Is there anything that we missed in terms of what
11 you did specifically for each jurisdiction that differed from
12 one another as it related to your locations?

13 A No. It was the -- with regard to this it would be
14 the estimated annual income and expenses. It would be each
15 specific construction budget as it relates -- and scope as it
16 relates to the proposed locations that I submitted and
17 corresponds with the size of the floor plan.

18 Q And you did those very specific to the locations
19 that you secured in the jurisdictions that you were applying
20 in?

21 A Yes. I -- yes.

22 Q Okay. We've already talked about this a little bit,
23 but in tab 7, 5.3.7.1, it talks about the likely impact of the
24 proposed recreational marijuana establishment in the community
25 in which it is proposed to be located. I would assume

1 depending on the location that you put your facility in would
2 impact that particular community. Would that be safe to say?

3 A Absolutely. Anything related to the resort
4 corridor, like I said before, the community impact is going to
5 be different than something related to a specific area in
6 suburban Vegas.

7 Q And going back to your experience as -- in the
8 construction and real estate world and competitive bidding
9 processes, the more detail you have as it relates to the
10 proposed construction, obviously you've got to be competitive
11 in your price, the better chances you have to be successful in
12 the bid; right?

13 A Sure. Nobody in the competitive application process
14 likes any question marks when it comes to am I missing
15 something or am I not missing something on the bid side.

16 Q And you thought by doing your due diligence, by
17 securing your locations, by creating your building plans and
18 your schematics, by doing your budgets and pro formas for each
19 jurisdiction, each location, you were giving yourself the best
20 advantage possible to be successful in getting the location?

21 A I would go a step further and say I was doing -- in
22 order to get your application considered, I was doing what was
23 needed. I mean, it goes without saying some of the detail
24 would hopefully, like any competitive process, you know, move
25 you across the finish line. But to be quite honest, in the

1 application I was doing what was required.

2 Q So you didn't believe that this was discretionary,
3 that you had a choice to secure a location?

4 A No.

5 Q You didn't think that you had a choice to present
6 building plans, schematics, budgetary pro formas specific to
7 the location and the jurisdictions you were applying in?

8 A No.

9 Q You thought you had to do it?

10 A Yes.

11 Q Because why?

12 A Because the application states it in several
13 different spots. And like I said before, the statute and the
14 administrative code confirmed it.

15 Q Going to page 17 of the application, in the lower
16 box where it talks about a detailed budget, again it
17 references a budget for the proposed establishment, including
18 pre-opening, construction and first year operating expenses
19 and it allocates a point score to that, doesn't it?

20 A Yes.

21 Q Okay. And so not only were you doing it because you
22 were complying with the law, it also was beneficial because
23 you were going to get points for doing it?

24 A Yes.

25 Q Going to the next page of the application, page 18,

1 the second box, it talks about "documentation concerning the
2 adequacy of the size of the proposed marijuana establishment
3 to serve the needs of the persons who are authorized to engage
4 in the use of marijuana, including building plans with
5 supporting details." It says that; right?

6 A Yes.

7 Q What was your thought about that? Oh, again, by the
8 way, it has a 20 point allocation to that.

9 A My thought would be if I didn't do it I would get
10 zero out of 20 points.

11 Q Did there come a point in time that you discovered
12 that some of your competitors were not doing what you were
13 doing with regard to securing specific locations for the
14 jurisdictions that they were applying in?

15 A The point in time was when the litigation started,
16 through different information that's been passed. And I
17 maintain a good relationship with, you know, people on both
18 sides. It was brought to my attention and confirmed that
19 people listed P.O. boxes as locations or instead of a P.O.
20 box, quote, unquote, P.O., it was a Mail Boxes, Etc. with a
21 specific address.

22 Q And they also used the same building floor plans,
23 budgetary pro formas for each location or jurisdiction that
24 they applied in?

25 A They used the same information across all

1 applications.

2 Q Did you ever get a notice from the Department -- Did
3 you ever get a notice --

4 Did I miss something?

5 THE COURT: Are you okay?

6 MS. SHELL: Your Honor, I was going to object to
7 something, but then I figured you'd just overrule me, so.

8 THE COURT: I would, but that's okay. If you want
9 to make your record, it's okay.

10 MS. SHELL: No, I'm fine, Your Honor. I'm good.

11 THE COURT: All right. If we had a jury in here it
12 would be different. You guys would be acting like you were
13 adults and it would be nice, but.

14 Okay. Keep going.

15 MR. CRISTALLI: Thank you.

16 BY MR. CRISTALLI:

17 Q Did you ever get a notification from the Department
18 of Taxation Marijuana Division that you did not have to list
19 specific locations or -- I'm sorry, secure specific locations
20 for the jurisdictions that you were applying in?

21 A I did not. After the application period opened, if
22 I recall correctly, I think that second week of September, to
23 the contrary there was an informational email that went out
24 encouraging the applicants to -- basically the State provided
25 a checklist encouraging the applicants to make sure they had

1 the different attachments filled out with regard to specific
2 locations.

3 Q So you in fact did receive a notification from the
4 Department of Taxation Marijuana Division subsequent to the
5 licensing period --

6 A Well, I --

7 Q -- which provided certain information, none of which
8 -- I'm sorry, it wasn't after, it was before the licensing
9 period; correct?

10 A It was right at the beginning. I can't remember if
11 it was the first day or the tenth. I mean, it wasn't the
12 10th. It was when it was still open at some point.

13 Q Okay. Giving you notification of certain issues as
14 it related to the application process?

15 A Yes. And it wasn't limited just to the proposed
16 location. It had to do with the fee and some other stuff,
17 too. But included in that reminder was information regarding
18 the different attachments, referencing the different
19 attachments that had to do with the property locations.

20 Q And it never said in that notification that the
21 applicant was not required to secure a location in the
22 jurisdiction they were applying for, but rather they could
23 just have a P.O. box?

24 A It did not and I never received that notification at
25 any time.

1 Q It never changed the language in the application
2 specific to the building plans, the floor plans?

3 A No.

4 Q Never changed the information with regard to the
5 community impact associated with the building in the community
6 that you were putting your facility in?

7 A No.

8 Q Didn't change the requirement for the budgets as it
9 related to the buildings that you were putting in those
10 jurisdictions?

11 A No.

12 Q It seems like that would be important information to
13 provide to the Department when considering a license for a
14 particular jurisdiction?

15 A Absolutely.

16 Q As we indicated earlier, you did not receive a
17 license?

18 A No.

19 Q Can we go to Exhibit 219? That is the entity
20 application key. And specifically, RD402.

21 THE CLERK: Mr. Cristalli.

22 MR. CRISTALLI: Yes?

23 THE CLERK: I don't have 219.

24 MR. CRISTALLI: I'm sorry. Did I miss that?

25 THE COURT: Dulce, where's 219?

1 THE CLERK: I don't have it either.

2 THE COURT: Oh, okay. I have a library cart back
3 there, Mr. Cristalli, and it's not on it.

4 MR. CRISTALLI: I have it on my supplemental exhibit
5 list, and so I'm under the assumption that you received this
6 as well.

7 MR. KOCH: 5006 is the same.

8 MR. CRISTALLI: Okay.

9 MR. KOCH: Are you looking at the I.D. key?

10 MR. CRISTALLI: Yeah.

11 MR. KOCH: 5006.

12 MR. CRISTALLI: So I will change to 5006.

13 THE COURT: 5006?

14 THE CLERK: Okay. That's admitted.

15 MR. CRISTALLI: Thank you.

16 (Pause in the proceedings)

17 BY MR. CRISTALLI:

18 Q Okay. Moving your attention to RD402 through 406,
19 do you recognize that?

20 A Yes. That's my company, GBS Nevada Partners.

21 Q Okay. And that's how on the Department website when
22 they released information they put an RD number to the
23 applicant; correct?

24 A Yes. I believe they recognized me as Recreational
25 Dispensary -- my five applications were Recreational

1 Dispensary 402, 403, 404, 405 and 406, I assume.

2 Q You applied in five different jurisdictions?

3 A I applied in four jurisdictions.

4 Q Sorry.

5 A One jurisdiction twice.

6 Q Correct.

7 MR. CRISTALLI: Can we go to Exhibit 5008? And if
8 we could find, Shane, 402 to 406. They're grouped.

9 BY MR. CRISTALLI:

10 Q And while Shane is pulling that up, Mike, let's just
11 talk a little bit about the location. You testified that you
12 learned that some applicants did not disclose locations or
13 specifics for their building as it related to jurisdictions.
14 You did. We talked a little bit about your experience in
15 competitive bidding processes in construction and real estate.
16 What is your -- what are your thoughts with regard to
17 applicants receiving inconsistent information with regard to
18 the requirements in the application and certain applicants
19 putting information with regard to the specifics of locations
20 and others not?

21 A Well, I mean, to promote a fair and impartial
22 process I don't know how one person could be provided
23 information regarding the application that the rest of the
24 applicants or a group of the applicants were not. I think to
25 level the playing field, so to speak, everybody has got to

1 have the same information. That's the only way it makes it
2 fair.

3 Q Directing your attention now to Exhibit 5008, on the
4 top right-hand corner it references RD402 through 406. Do you
5 see that?

6 A Yes.

7 Q And we've previously identified that your company,
8 GBS Nevada, is referenced as 402 through 406?

9 A Yes.

10 Q Okay. To the left of that it -- well, first of all,
11 it is called a tally sheet and it is specific to the non-
12 identified team, so I'm assuming the non-identified portion of
13 the application. It talks about construction and that there
14 was an allocation of 20 points for construction; correct?

15 A Yes.

16 Q Again, what did you do with regard to building plans
17 and construction specific to the locations in the
18 jurisdictions that you applied in?

19 A I submitted five different LOIs securing five
20 different pieces of property with five different general floor
21 plans, five different security plans corresponding with those
22 general floor plans, five different construction budgets
23 corresponding with those general floor plans.

24 Q And what -- how many points out of the 20 did you
25 receive for that category?

1 A I received 15.67 points.

2 Q Okay. Going down to care, quality, safekeeping,
3 which is a 90 point allocation, how many points did you
4 receive for that?

5 A I received 74.17 points.

6 Q And in that portion of the scoring sheet, it also
7 talks about security procedures that we already discussed that
8 was specific to the building that you were putting in the
9 particular locations in jurisdictions that you were applying
10 in?

11 A Yes. That and the detailed budget as well would
12 have been something else that I didn't mention just now that I
13 included. I estimated income and operating expenses for
14 specific locations under that category.

15 Q So for the section that references building
16 construction, 20 points, and the portion that identifies care,
17 quality and safekeeping, 90 points, you put very different and
18 specific information for each location that you were applying
19 for in the jurisdictions that you were applying in?

20 A Yes.

21 Q Okay. And finally, community impact, there was an
22 allocation of 15 points. What did you receive -- did I ask
23 you what you received in care, quality, safekeeping?

24 A 74.17.

25 Q Okay. Going back to community impact, there's an

1 allocation of 15 points. How many points did you receive?

2 A 8.33.

3 Q Again, you spoke previously about specific
4 information you put in there as it related to community impact
5 specific to the locations and the jurisdictions that you
6 applied in?

7 A Yeah. Generally speaking the community impact is
8 going to be different depending on the location.

9 Q And you received a total score, calculating all of
10 those points, of what?

11 A 98.17 on the non-identified criteria.

12 Q And that's out of 125 points?

13 A Yes.

14 Q Okay. For four different locations?

15 A Five different locations.

16 Q Five locations. I'm sorry.

17 THE COURT: Four jurisdictions.

18 MR. CRISTALLI: Four jurisdictions. Thank you, Your
19 Honor.

20 BY MR. CRISTALLI:

21 Q All put here on one tally sheet. So here's the
22 question. You received the same score out of that non-
23 identified portion for each jurisdiction that you applied in?

24 A Yes. The non-identified criteria was supposed to be
25 blind scoring and it appears to me -- again, if you look at

1 the top it says, "Non-identified Team Summary Page" in
2 parentheticals (per application). I submitted five
3 applications. It appears to me that I was scored exactly the
4 same for five applications containing five different pieces of
5 information.

6 Q And you said this was supposed to be a blind
7 process.

8 A I believe -- yeah, I don't even know how that's
9 possible.

10 Q But you received the same score despite providing
11 different information in this section of the application for
12 each jurisdiction you applied in?

13 A It appears from here that not only did I receive the
14 same score, I received only one tally sheet for \$25,000 worth
15 of applications fees.

16 Q And did you have an opportunity to look through this
17 entire detailed score by category sheet 9, identified as it
18 relates to all the applicants?

19 A I did.

20 Q Do you notice that some applicants were grouped
21 together with one tally sheet and other applicants had
22 separate tally sheets for each jurisdiction that they applied
23 in?

24 A I -- generally speaking most of them had their own,
25 but there were some that were linked together. I don't know

1 the particulars because I didn't look into it other than mine.

2 Q Do you have any explanation as to how you could
3 receive the same score for each location and jurisdiction that
4 you applied in, despite providing different information for
5 each of those applications in each of the jurisdictions you
6 applied in?

7 A My only explanation is with regard to the time that
8 the State documented at the bottom, it took them 21 minutes to
9 review my 200-page application. I would imagine that made it
10 a little easier on them.

11 Q So when you break it down to the applications that
12 you submitted, on the bottom on the total time period spent on
13 your applications -- Oh, and by the way, how many pages was
14 your application as it related to the non-identified portion
15 of the application?

16 A The blind non-identified portion was -- I don't
17 recall exactly -- plus or minus 200 pages.

18 Q Okay. Plus or minus 200 pages with different
19 information in each application that you applied in specific
20 to the jurisdictions that you applied in. How long did it
21 take to review those application?

22 A It appears from the bottom that they took about 20
23 minutes on each, so an hour and -- well, 1.75 would be what,
24 an hour and 45 minutes or something. An hour and 45 minutes
25 on five applications.

1 MR. CRISTALLI: Court's indulgence.

2 BY MR. CRISTALLI:

3 Q So, Mike, using your recollection as to what you put
4 into the applications specific to the jurisdictions that you
5 applied in and using your construction background, can you
6 give us a little detail about the specifics of the information
7 you put in, the budget. Well, first of all, you had to secure
8 the location, but the budgets, the plans, the floor plans,
9 whatever additional information you put in there specific to
10 the locations you applied in and how long -- being in the
11 business, how long would it take to review five different
12 applications with specific information as to each application?

13 A I mean, to do it correctly it's going to obviously
14 take longer than 20 minutes. With regard to the specific
15 information, you know, we maintain -- in our application we
16 maintain specific floor plans to the locations that we
17 secured. So if I had an LOI, for instance, for 3,000 feet or
18 3,500 feet or 4,000 feet, we would put a corresponding floor
19 plan in there that matched the current floor plan under which
20 we operate and then tailor the security plan to that specific
21 location.

22 And then with regard to the construction budget,
23 obviously it's going to cost more to build 5,000 feet than
24 it's going to cost to build 4,000 feet, so it was tailored to
25 square footage with, you know, estimations based on

1 jurisdiction and finishes.

2 And then with regard to the operating pro forma, I
3 think we had one near the Strip that we estimated the retail
4 income to be north of \$20 million. And then we had one in the
5 north that we estimated the retail income to be closer to 7 or
6 8. I think from a practical experience standpoint the
7 operating expenses, it goes without saying, are going to be
8 different or those two very different locations.

9 Q And you have experience. These are sophisticated
10 plans. This is a business --

11 A General floor plans. I mean, we didn't submit
12 construction plans, you know, but.

13 Q Sophisticated enough. How long do you think that
14 somebody who doesn't or isn't qualified to review those type
15 of plans because he isn't in the business of construction or
16 real estate would you think would take to review close to 200
17 pages five different times? More than an hour?

18 A I think just to look at it would take an hour. I
19 mean, I think you're -- you know, if you're not -- you know,
20 you have to look at it as a whole, right? You couldn't look
21 at a floor plan, just pull it up and say, hey, yeah, that
22 looks good and then go to the operating budget. You need to
23 understand both. It wouldn't mean anything to you if you
24 didn't understand it. I guess you could literally just look
25 at it and it would take you five seconds.

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

2 THE COURT: Any of the other plaintiffs wish to ask
3 questions at this time?

4 Ms. Haar.

5 MS. HAAR: Thank you, Your Honor.

6 CROSS-EXAMINATION

7 BY MS. HAAR:

8 Q Good afternoon.

9 A Good afternoon.

10 Q Can I get you to turn to Exhibit 2009, please.

11 THE COURT: Those are in the black books, sir.

12 (Pause in the proceedings)

13 THE WITNESS: Okay.

14 BY MS. HAAR:

15 Q This is the Governor's Task Force. Are you familiar
16 with the Governor's Task Force report?

17 A No.

18 Q No? So the Governor put forward an entire Task
19 Force regarding the implementation of Question 2, which is the
20 regulation and taxation of marijuana, and you didn't look into
21 it at all?

22 A No.

23 Q You were here when Mr. Ritter testified; correct?

24 A Yeah, for part of it.

25 Q Okay. And he clarified that the Governor's Task

1 Force report had indicated -- it's on page 19, that the Task
2 Force recommended that the consideration of location would be
3 removed.

4 A Which -- these are numbered like 2400.

5 Q 2515. Two-thirds of the way down the page, Rating
6 Criteria and Applications.

7 A Uh-huh.

8 Q "Task Force recommends the impartial numerically
9 scored process used by the medical marijuana program be
10 revised for retail marijuana stores to remove consideration of
11 location and focus only on the applicant qualifications for
12 operation of a marijuana establishment." But you did not seek
13 out any additional information like the Governor's Task Force
14 Report in looking for guidance on how to complete your
15 application?

16 A No. I sought out the statute and the administrative
17 code. I mean, I've never seen this report before.

18 Q Okay. Let's look specifically at Exhibit 2018.
19 2018 should be the scoring sheets or the Final Store
20 Application Scores and Rankings.

21 A Yes.

22 Q Okay. And so you applied in Clark County,
23 Henderson; correct?

24 A Yes.

25 Q And there were six conditional licenses awarded in

1 Clark County, Henderson?

2 A Yes.

3 Q And the last place or the sixth conditional license
4 awarded was 210.16 in points?

5 A Uh-huh.

6 Q And in that jurisdiction you received 180.17 points,
7 is that correct?

8 A Yes.

9 Q Which put you 29.99 points out of receiving a
10 license?

11 A Yes.

12 Q All right. Let's continue down. Clark County, Las
13 Vegas. There were ten conditional licenses awarded there;
14 correct?

15 A Uh-huh.

16 Q And the lowest awarded license received 208 points?

17 A Yes.

18 Q And you received 180.17 points?

19 A Yes.

20 Q That put you 27.83 points out of receiving a
21 conditional license?

22 A I'll assume the math. Yes.

23 Q Keep going down to Clark County, North Las Vegas.
24 You applied in that jurisdiction?

25 A Yes.

1 Q And there were five conditional licenses awarded in
2 that jurisdiction?

3 A Yes.

4 Q And the last place conditional license awarded
5 received 214.5 points?

6 A Yes.

7 Q And in that jurisdiction you received 180.17 points?

8 A Yes.

9 Q Which put you 34.33 points below receiving a
10 conditional license?

11 A Yes.

12 Q And jumping down, the last jurisdiction you applied
13 to was unincorporated Clark County?

14 A Correct.

15 Q And there were ten conditional licenses given in
16 that jurisdiction?

17 A Yes.

18 Q The lowest scored conditional license received in
19 that jurisdiction was 210.16 points?

20 A Yes.

21 Q You received 180.17 points in that jurisdiction?

22 A Yes.

23 Q And that would be 29.99 points out of receiving a
24 conditional license?

25 A Yes.

1 Q And of the items that you had described previously
2 that you were concerned about the points you received on, the
3 first was the non-I.D. building portion, which you received
4 15.67 out of 20 points?

5 A Yes.

6 Q And so that would be 4 additional points you were
7 requesting if you were going to have a full score on that one?

8 A Sure. I'm not looking at it, but I would assume so.

9 Q If we can bring up 5008. And given that the lowest
10 -- the closest in terms of points for jurisdictions that you
11 had applied for was Clark County, Las Vegas, where you were
12 27.83 points out of the running, you would have received -- it
13 sounds like had it been scored the way you would have liked,
14 4 additional points for a building.

15 A Well, I think -- I don't think that's a real fair
16 characterization because they scored all five of my
17 applications, as you just so eloquently pointed out, with the
18 exact same score on the exact same tally sheet. So I really
19 don't -- I can assume your math is correct, but that's about
20 all that's correct in this whole process is your math. So I
21 don't -- I mean, if you're going to ask me if my scores are
22 correct, I'm certainly not going to argue that the number on
23 the paper is what you read, but clearly it says non-
24 identified, which is blind. It says per application, which is
25 one. And you just read me five of the same exact numbers on

1 the same tally sheet. So I don't really -- I'm not in a
2 position to dispute that you're reading the correct number, if
3 that's what you're looking for.

4 Q Well, you would address -- the three areas of
5 concern for you that you addressed on direct were community
6 impact, under care, quality and safekeeping the building
7 security issue, and then the points for the building section
8 on the non-I.D. Collectively across all of those you
9 identified falling short 12 points on a perfect score, but
10 Clark County, Las Vegas was your closest application where you
11 were more than 27 points out of receiving a conditional
12 license. Is that correct?

13 A No, that's a total mischaracterization. I'm not up
14 here saying my -- you know, crying over sour grapes for my
15 points. I'm up here saying the process wasn't followed. So
16 you're including people that got licenses that didn't include
17 specific location because of some report that you just asked
18 me about that I've never seen, and I can assume 90 percent of
19 the applicants didn't see it.

20 So I'm not saying my score was incorrect and if I
21 get the extra 4 points I'm going to be above the line. That's
22 not why I'm here. I'm here to say if you're going to score
23 based on the requirements in the application, then all of
24 this, all of these numbers are messed up, I can imagine. I
25 haven't obviously looked at everyone's application with the

1 detail that I've looked at mine, but for you to point out
2 numbers that may as well be unicorns because they're not real,
3 like I don't -- I understand what you're doing, but I just --
4 I don't want you to mischaracterize why I'm here.

5 Q All right.

6 A I'm not here to argue over numbers. I understand
7 that's what the paper -- the number on the paper is definitely
8 what the paper says.

9 Q Okay. Let's jump to the allocation itself, then,
10 which I believe was Exhibit 5.

11 A Is that in this book?

12 Q No. It would be in one of the white --

13 THE COURT: It's in the white one on the very end by
14 the blue truck. Up here, sir, on that shelf there.

15 THE WITNESS: Volume 5?

16 THE COURT: No, it should be in the first volume
17 because the first volume ends with Exhibit 20, if I remember
18 correctly.

19 THE WITNESS: I'm sorry, ma'am, what was the number?

20 MS. HAAR: It's Exhibit 5 and we will go to page 21
21 of 34, which is Attachment A.

22 BY MS. HAAR:

23 Q Are you there?

24 A Yes, ma'am.

25 Q Are you familiar with this?

1 A Very much so.

2 Q Okay. And can you please read the first -- so the
3 very first line within the application says, "Check the box
4 for the type of marijuana establishment." Do you see that?

5 A Yes.

6 Q Can you please read the box below that?

7 A "Marijuana establishment proposed physical address.
8 This must be a Nevada address and cannot be a P.O. box."

9 Q Can you please read the entire box? Is that --

10 A That is the entire box on mine. Sorry.

11 Q Can I see the -- what is the date on the bottom of
12 that one? The very bottom left-hand corner.

13 A I don't know. 6/22/2018?

14 Q Version 5.4?

15 A Yeah. This is the one I got. Can I get a license?

16 THE COURT: The one that's in evidence shows Version
17 5.4, 6/22/2018. Recreational Marijuana Establishment License
18 Application, page 134, MMLF00012. Is that not what other
19 people are using? Because that's the one we have which is the
20 official court record.

21 MS. SHELL: Your Honor, did you say the Bates ended
22 in one two?

23 THE COURT: That's on page 1. On page 1. MMLF00012.
24 I'm under tab 5 in the book. I'm not saying it's right, I'm
25 just saying that's what the court's record is.

1 MS. SHELL: I understand. I understand, Your Honor.

2 THE COURT: Which is why I keep asking people for
3 Bates numbers when you're talking about page numbers, to
4 insure that the record is the same for everybody. Is there a
5 problem?

6 MS. HAAR: We have a different version.

7 THE COURT: So that's not the one that's part of the
8 court record.

9 MS. HAAR: Correct. So at this point I don't have
10 any more questions for this witness.

11 THE COURT: Okay.

12 MR. KEMP: Your Honor, can we get a copy of the
13 different version that counsel was using?

14 THE COURT: So in a little bit we're going to talk
15 about the privilege log and then we can talk about all those
16 things at the same time.

17 So did you have any more questions for this witness?
18 Ms. Haar. I'm only on Ms. Haar, not to you yet, Mr. Koch.

19 MS. HAAR: No. I have no questions.

20 MR. KOCH: I think she said she was done.

21 THE COURT: Okay. Mr. Koch, would you like to ask
22 any questions?

23 MR. KOCH: Yes.

24 //

25 //

CROSS-EXAMINATION

BY MR. KOCH:

Q Mr. Viellion, if you would open back up to Exhibit 5008. That was the non-identified tally sheets we were looking at earlier.

A The smaller book, sir?

THE COURT: The smaller black book, I believe.

MR. KOCH: It would have been this one.

THE WITNESS: Is this the one that she asked me to look at?

MR. KOCH: Here we go, 5008.

BY MR. KOCH:

Q And this is the tally sheet we were looking at earlier; correct?

A No. This is somebody else's.

Q I guess the set of tally sheets. This is a combined set of tally sheets that --

A Oh, I'm sorry. Yes, sir.

Q All right. And you looked at RD402 through 406, was your -- the code name number for GB Sciences or GB --

A It's GBS Nevada Partners.

Q GBS Nevada Partners. Okay.

A I'm sorry. Are these in numerical order, or is there --

Q Yeah, they're in numerical order. The top right --

1 it's double-sided, if you'll see, so I believe yours is
2 actually on the left-hand side or it might be the back of a
3 page.

4 A It goes from 40-- Oh, on the back of the page. Yes.
5 Sorry. Yes, sir.

6 Q All right. And you had indicated that you had a
7 number of applications that were grouped together and a
8 combined tally was prepared for that combined set of
9 applications, is that right?

10 A Yes.

11 Q Okay. And did you say you had a chance to look
12 through other tally sheets for other applicants?

13 A I didn't -- I just basically -- I didn't look
14 through the tally sheets. I just looked at the top right to
15 see if I was missing something or how my non-identified could
16 be looped together. So, you know, I didn't look at the tally
17 sheets, I just looked at the numbers.

18 Q All right. I just want to look at a couple of
19 others just for the question you had raised. Let's look at --
20 turn to 590 through 602, which would be on the left-hand or
21 back of the page. Are you there?

22 A Yes, sir.

23 Q Again, here we have a set of applications. It
24 appears this would be 12 or 13 applications together and it
25 appears to be scored together. Do you know which applicant

1 this was for?

2 A I do not.

3 Q I'll represent based upon the key, the numbers that
4 are listed in the key that I think you looked at earlier, this
5 is Lone Mountain, which is one of the parties that received a
6 license. Does it surprise you that a party that received a
7 license has their applications, not-identified, grouped
8 together for scoring purposes?

9 A I mean, if you're simply trying to point out
10 additional errors on the non-identified side, I'm not the one
11 to argue with you.

12 Q I'm not trying to point out additional errors. I'm
13 asking would it surprise you if an applicant who received
14 enough points to be granted a license be also scored in the
15 same way that your applications were scored?

16 A Again, I'm not -- the method in which they were
17 scored is where I think the flaw comes in. So I don't think
18 it's a winner or I don't think it matter what table you're
19 sitting at whether or not the non-identified criteria -- how
20 could it be scored together? You know, it doesn't surprise me
21 regardless of what table. I think that it's wrong.

22 Q All right. In the tab on the bottom on that sheet
23 it also lists -- it appears -- is that half an hour for
24 building construction, about an hour and a half for care
25 quality, half an hour for community impact. And so those

1 applications appear to have been scored by those graders in a
2 time period of two and a half, two hours and two hours,
3 similar to what GB's applications were scored?

4 MR. CRISTALLI: Objection. I think that misstates
5 the evidence.

6 THE COURT: Overruled.

7 THE WITNESS: I don't know with regard to this
8 application if this is one of the ones that submitted the same
9 information with regard to location or different information
10 with regard to location. I think that's certainly of material
11 importance when you're talking about time. So if you're
12 asking me if 2.5 hours is similar to 1.75 hours, I mean, I
13 don't think there's much of a difference there, but obviously
14 there's more.

15 BY MR. KOCH:

16 Q And I guess my overall question is you don't believe
17 or you don't have any information that leads you to believe
18 that your applications were treated any differently than
19 anyone else's; is that right?

20 A No. I have plenty of reason to believe that. If
21 you have a non-identified -- well, clearly they were treated
22 different than anybody else's because if you just go to the
23 next page or the previous page and there's one -- I mean, this
24 is their sheet. It says, Summary Page per Application. So if
25 one applicant has something that says Summary Page, One

1 Application, and they have five summary sheets and I have five
2 summary sheets -- I mean, I have one summary sheet for five
3 applications, it goes without saying that we were treated
4 differently.

5 Now, if you're saying was I treated differently than
6 everybody in the process, whether or not that's true I'd have
7 to evaluate everything in the book. But I was certainly
8 treated differently than some people in the process, and to
9 your point, as was this applicant. The process wasn't the
10 same for this applicant as it was for the applicant before or
11 after them, either.

12 Q And that, I believe, is based solely upon what these
13 tally sheets show based upon the grouping together of the
14 applications?

15 A Well, no, it's not based solely on that, but
16 certainly this is one factor.

17 Q Okay. The next page -- keep that open -- 603
18 through 608, I've got five, six applications there. And this
19 applicant, it looks like those are tallied together, same
20 score for all five or six applications and the time scoring
21 down below, you know, I'll say about the same time. You can
22 correct me if I'm wrong. About the same time for those five
23 or six applications as GBS Partners. I keep getting that name
24 wrong. I think there's a lot of GB's in this case.

25 A Yeah. GBS Nevada Partners.

1 Q Okay.

2 A Again, I mean, I would offer the same answer. If
3 it's non-identified criteria, how can you score it together if
4 you don't know who it is? I mean, is that just luck?

5 Q And the fact that this applicant here, which is
6 Global Harmony, who I believe is a plaintiff in case, also did
7 not receive a license, you don't have any reason to understand
8 whether their building plan was good, bad or --

9 A I don't know anyone else's application besides mine.

10 Q And so your complaint is not that your application
11 was not scored at all; right?

12 A I mean, that would be -- not scored at all or not
13 scored appropriately?

14 Q Your application was scored; correct?

15 A Yeah. I received a score for all five applications.
16 The same score.

17 Q And you got points for your building plan; correct?

18 A Yes.

19 Q They weren't as high as you would like to have
20 qualified for a license; correct?

21 A No, I don't necessarily -- I don't think you can
22 characterize my position as that.

23 Q Other than the review of the tally sheets that we
24 have here and the supposition that those were graded together
25 and the determination based upon that that they were

1 improperly scored in some way, you don't have any information
2 that leads you to believe that an evaluator in particular did
3 something improper with your application because of
4 information it received from you or from anyone else?

5 A I think you can look no further than the title on
6 the page to know that the evaluator did something
7 inappropriately. My complaint is less about numbers and more
8 about actions. And the same fair and impartial process was
9 arbitrarily applied to some and not to others. I don't think
10 you have to look any further, to your point, than the title of
11 this very scoring sheet that says, "Non-identified Team
12 Summary Page per Application" to see that there was certainly
13 different treatment throughout this process between some on
14 both sides at both tables. The issue with me is less about
15 numbers and more about impartiality.

16 Q Do you believe on these non-identified applications
17 that there was -- the evaluators knew who those applicants
18 were?

19 A With 100 percent certainty. How could you not know
20 who it was if you were grading them together?

21 Q Perhaps if they were submitted together?

22 A The very title, the very top of the application
23 talks about the blindness of -- they don't use blind, but it
24 talks about basically them not knowing who it is. It would
25 have to be scored differently.

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

2 THE COURT: Any additional defendants in intervention
3 wish to ask questions?

4 Mr. Hymanson.

5 MR. HYMANSON: Thank you, Your Honor.

6 CROSS-EXAMINATION

7 BY MR. HYMANSON:

8 Q Good afternoon.

9 A How are you doing, sir?

10 Q So, sir, in 2000-- in preparation for the
11 application in 2018, how much time did you or your company
12 spend on that application?

13 A I assisted legal counsel in preparing the
14 application for submission, so if you're including that time,
15 weeks.

16 Q Okay.

17 A If not months.

18 Q Weeks, if not months? Okay.

19 A Yeah.

20 Q All right. And who was involved in that process?

21 A I was involved as the managing partner. Our counsel
22 was involved. You know, throughout the process other partners
23 were involved in certain roles.

24 Q Were you involved in the 2014 process?

25 A I was not.

1 Q Okay.

2 A I was an owner, but I was not, no.

3 Q You were an owner. Okay. You are familiar with the
4 2014 process as an owner?

5 A Vaguely. I wasn't managing partner until early
6 2017, so, I mean, other than filling out my portion of the
7 application.

8 Q There's been testimony in this courtroom over the
9 past several days that there's been a strong evolution of
10 change in the cannabis business nationally, internationally
11 and in Nevada. Would you agree from the licensing of 2014 to
12 2018 there were significant changes?

13 A As far as the application process or the -- what you
14 were referring is the industry.

15 Q The industry. Let's start with the industry.

16 A There's definitely industry changes, you know.

17 Q And certainly a lot more competition in 2018 for
18 licenses than there were in 2018 (sic)?

19 THE COURT: Can you rephrase your question? You
20 used 2018 twice.

21 BY MR. HYMANSON:

22 Q 2014 versus 2018?

23 A I would have to look at the number of applicants. I
24 mean, the 2014 application process, if you were involved at
25 all, was pretty competitive.

1 Q And there were double the applicants in 2018. There
2 were over 400 -- 462 applications, weren't there?

3 A Well, double the applications but not the -- I don't
4 believe the applicants were double. You know, people like me
5 that submitted five and were graded all five at the same time,
6 you can't count me five times.

7 Q So you said that you did, while you were doing the
8 application in 2018, you did everything that was required;
9 correct? That was your testimony.

10 A I don't think I -- I did more than what was
11 required, but yeah, I did the required stuff, too.

12 Q You did -- whatever was required you did for the
13 application; right?

14 A Yes.

15 Q Okay.

16 A I mean, I would imagine they scored it, so if you
17 didn't do what was required I would assume you wouldn't get
18 scored.

19 Q Well, I just want to make sure. You testified you
20 did -- you looked at the application and you did whatever you
21 thought was required for the application in 2018; correct?

22 A Yes.

23 Q And some of your applications were different in
24 terms of the information you put forth; correct?

25 A Specific to locale, yes.

1 Q Yes. All right. You didn't hold back on any of
2 those applications, did you? You didn't hold back on any of
3 those applications; right?

4 A Hold back in what sense?

5 Q Well, I know you said you did everything you could
6 with each application and then you said in your testimony that
7 what you submitted was different, given locale. I can presume
8 that you did the best you could with every application. Would
9 that be accurate?

10 A Sure. I think -- I don't want to misunderstand your
11 question and I don't want you to misunderstand my testimony --

12 Q Sure.

13 A -- but you're -- at least to me you're asking if I
14 submitted a floor plan for both. Yes. What I'm saying is the
15 floor plan was different but it was still a floor plan in
16 order to check the box, if that's what you're insinuating.
17 Yeah, I checked the box on every application.

18 Q What I'm insinuating is that you read the
19 application, you spent weeks and months working on it and you
20 did your very best in each application that you filed;
21 correct?

22 A Yes.

23 Q All right. And if you did your very best in each
24 and every application, does it surprise you that each and
25 every application was scored the same score?

1 A Yes.

2 Q What would you do different now that you've seen the
3 scores? What would you have done different in those
4 jurisdictions so as to obtain a higher score?

5 A I don't know that if the process is the same the
6 result would be any different. I don't think it was scored
7 correctly. I don't think I received the correct score not
8 because I missed something on my application, but because I
9 don't think it was scored and the rules were applied correctly
10 to everybody. That's I guess where we're having a difference
11 here.

12 Q Okay. Well, we're not having a difference. I mean,
13 I'll accept whatever you tell us. You're just saying that you
14 think that the evaluation wasn't done appropriately; correct?

15 A Correct. That's a big part of it.

16 Q And you don't take any responsibility for coming up
17 short and not qualifying based on your application itself?

18 A Not at all. I think that the application would have
19 qualified had the process been done correctly the first time.

20 Q Okay. Do you have an approximation of how much
21 money you spent in preparing your application?

22 A I don't.

23 Q While you were attempting to do everything that was
24 required, you said you hadn't even -- you weren't familiar
25 with the Governor's Task Force?

1 A Yes. I've never seen it.

2 Q Did you attend any of those open hearings while they
3 discussed applications and the cannabis process?

4 A No.

5 Q So do you consider yourself -- perhaps you came up a
6 little short in terms of giving yourself the best opportunity
7 to gather information that would benefit you in going forth
8 for a license in 2018?

9 A Because I didn't attend the meetings?

10 Q Sure. You didn't get -- you didn't go out and get
11 the best information that was available as this whole process
12 was developing.

13 A I read the statute, I looked at the administrative
14 code that the Department put forward and I matched it up with
15 the application that I spent a month and a half on. I'm not
16 really certain how attending some meeting for, you know, a
17 government task force would have done anything different. I
18 don't think I would have.

19 Q So as you sit here today, do you take any
20 responsibility for coming up short on the licensing, or do you
21 blame the State for not applying the regulations or the rules
22 properly?

23 MR. CRISTALLI: Objection. Argumentative.

24 THE COURT: Overruled. You can answer.

25 THE WITNESS: Repeat the question. I'm sorry.

1 BY MR. HYMANSON:

2 Q Yeah. I want to know if you and your company take
3 any responsibility for coming up short in the qualification
4 process for the licenses, or do you simply blame the State of
5 Nevada for not doing a good enough job for you to qualify?

6 A Given the -- what seemed like, as the applicant with
7 experience on the competitive application forefront, given the
8 flaws in the process I don't find any flaw with my team and my
9 application.

10 Q So you and your --

11 A There's obvious flaws on the State's side or I don't
12 think I would be here.

13 Q So your evaluation is that you and your team are
14 flawless?

15 A I'm sure we could look back and -- I mean, flawless
16 wouldn't be something that I would use as far as a term, but I
17 can say, you know, as a Monday morning quarterback and a
18 Saints fan, I'm certainly going to blame it on the referee.

19 Q Let me cut to the chase.

20 THE COURT: It happens a lot lately.

21 BY MR. HYMANSON:

22 Q Let me cut to the chase, like the Saints fans do.
23 What do you want?

24 A I want the five licenses I applied for.

25 Q The Saints wanted to go to the SuperBowl. But

1 that's what you want, that's why you're here, you want the
2 five licenses that you didn't qualify for?

3 A Yeah. I think if the Saints -- if the referees were
4 a government entity, hopefully they would be in a little
5 better position.

6 Q So you want the five licenses?

7 A Yes.

8 Q The current licenses that you hold -- you're in
9 business; correct?

10 A That's correct.

11 Q And you're making a profit?

12 A Yes.

13 Q And as to the license that you don't have, you're
14 not being irreparably harmed, are you, because you don't
15 qualify for them at this point?

16 A I think there's certain irreparable harm in the
17 opportunity that I would suffer or that I'm suffering through
18 in not being able to, you know, build what I want to build.

19 Q But as you sit here today, you have no irreparable
20 harm as a result of not qualifying for a license?

21 A I -- if I had qualified for a license, I would be in
22 a better position than I am today, so I'm not sure how you
23 could say there's, you know, no irreparable harm.

24 Q I'll refer you to the Saints.

25 MR. HYMANSON: No further questions, Your Honor.

1 THE COURT: Let me ask a few questions before we
2 have redirect.

3 THE WITNESS: Yes, ma'am.

4 THE COURT: On your LOIs for the five different
5 locations, do those have an expiration date?

6 THE WITNESS: I don't have them in front of me, Your
7 Honor, but I believe that most of them were good for a certain
8 period. I don't know what that period was.

9 THE COURT: Do you know if that period has expired?

10 THE WITNESS: Not on all of them. Not on all of
11 them.

12 THE COURT: Okay.

13 THE WITNESS: I know on one it has for sure.

14 THE COURT: So it's expired on one and the others
15 you're not sure?

16 THE WITNESS: Yes, ma'am.

17 THE COURT: All right. Thank you.

18 Redirect.

19 MR. CRISTALLI: Your Honor, I am going to redirect
20 Mr. Viellion, but Mr. Parker wanted an opportunity to ask some
21 questions and we have no objection to him doing that.

22 THE COURT: Mr. Parker, you're out of order.
23 Remember, you were supposed to go --

24 MR. PARKER: I don't mind going after.

25 THE COURT: I asked all of the plaintiffs and you're

1 a plaintiff.

2 MR. PARKER: They were things that came up during
3 cross.

4 THE COURT: Even though Hymanson is sitting next to
5 you and keeps confusing me.

6 MR. PARKER: I know he does.

7 THE COURT: All right.

8 MR. PARKER: That's part of Phil's game.

9 THE COURT: Would you like to ask some questions?

10 MR. PARKER: Just a few.

11 THE COURT: Mr. Parker, that would be lovely.

12 MR. PARKER: Thank you.

13 MR. GENTILE: Actually, those questions were the
14 ones he was going to ask Fridland.

15 MR. PARKER: Stipulate, Your Honor.

16 Can we put up Exhibit 5, Shane, page 21.

17 THE COURT: The version of Exhibit 5 that is in the
18 court's record?

19 MR. PARKER: I like the one that he was talking
20 about earlier. Is that the one in the court's records?

21 THE COURT: I told you guys which one is in the
22 court's record so somebody can straighten that out.

23 MR. PARKER: So that's the one. So could you
24 highlight for me, Shane, the --

25 THE COURT: What is the Bates number on that one?

1 I want to make sure we're on the same page.

2 MR. PARKER: Shane, what is the Bates number on
3 that?

4 I.T. TECHNICIAN: 32

5 MR. PARKER: 32, Your Honor.

6 THE COURT: That is not the Bates number on your
7 tab 5. Oh, page 21 of 34, it might be. Hold on.

8 MR. PARKER: Yes. I want to make sure we're
9 correct.

10 THE COURT: Hold on a second. Yes, that is the
11 correct version. Thank you.

12 MR. PARKER: Thank you.

13 Now, if you could highlight that section again for
14 me, please.

15 THE WITNESS: Sir, do you remember what book that
16 was in?

17 MR. PARKER: You know, I think it's the first book.

18 THE WITNESS: This one?

19 MR. PARKER: Volume 1, Exhibit 5. And go up to the
20 section we were on a little while at the top. There we go,
21 right there.

22 THE COURT: And, sir, you may be able to read it on
23 the screen since they blew it up for you.

24 THE WITNESS: Yes, ma'am. Thank you.

25 //

DIRECT EXAMINATION

BY MR. PARKER:

Q All right. Are you ready?

A Yes, sir.

Q What's your last name again, sir?

A Viellion.

Q Spell it.

A V-(as in Victor)-i-e-l-l-i-o-n.

Q Viellion. Can I call you Mike?

A Please.

Q Thank you. So, Mike, it says here within the parenthetical, it says, "This must be a Nevada address and cannot be a P.O. box." Did any of your five proposed locations include a P.O. box?

A No. They were all physical addresses, specific -- site specific addresses.

Q Is it your position that any applicant that included a P.O. box as their proposed address should not have been scored and should not have been awarded a conditional license?

A Yes. It's my position that anybody that didn't submit a complete application shouldn't have been scored.

Q And would you believe that someone was treated impartially, maybe someone like you who actually provided an address as opposed to a P.O. box, if that applicant was scored and given a conditional license?

1 A If you follow the statute and the regulations, one
2 applicant followed the statute and the regulations and one
3 applicant did not and both applicants were scored, I would not
4 think that as an impartial process.

5 Q Would you consider that arbitrary and capricious?

6 A I'm not sure I understand the exact definition of
7 arbitrary and capricious, but it seems so.

8 Q All right.

9 MR. PARKER: Now, let's leave that up for a second,
10 Shane.

11 BY MR. PARKER:

12 Q Mike, give me a little more background and provide
13 it to the Court. Let me just tell you that the Court is very
14 familiar with construction litigation, but this is more for
15 the record.

16 THE COURT: Let's not talk about RFIs again, okay?

17 BY MR. PARKER:

18 Q So, if you could explain to the Court what it takes
19 to put together a plan, or if you're using a floor plan what
20 it takes to determine whether a floor plan will be adequate
21 for this type of business.

22 A Well, I think obviously with the help of
23 professionals in terms of architects and designers we have
24 built a model that we particularly like in our current
25 location, and what we've done is when you secure a site from a

1 retail standpoint you can either -- most times, unless it's a
2 ground-up build to suit, which is hard to do in 12 months, you
3 can pick a location that's important to you or pick a building
4 footprint that's important to you. You don't oftentimes get
5 both.

6 So we spent a lot of time, effort and money taking
7 the specific locations that we had secured and adapting them
8 to the method in which we like to operate and that includes
9 basically measurements, layouts, function and flow in terms of
10 the Department's requirements with regard to security that in
11 this industry are more rigorous than they are in just the
12 regular retail industry, for obvious reasons, you know, cash
13 and product.

14 Q Exactly.

15 A So, you know, you spend a lot of time adapting
16 certain situations or certain locations to the situation that
17 fits your retail model. You know, in our case our retail
18 model is 3,500 square feet, plus or minus, you know, of retail
19 floor space.

20 Q Now, when you decide on a location per jurisdiction,
21 did you have any concept in mind in terms of what floor plan,
22 what location, what site would fit best in that jurisdiction?

23 A So I had exact locations, but I'm of the philosophy
24 look for the location not the building layout. So, you know,
25 it's going to take someone like me, you know, that's looking

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

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

12 A One out of six?

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

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

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

25 A Yes, sir.

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

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

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

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

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

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

12 Q Right.

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

18 Q Right.

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

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

1 A Impossible.

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

6 A No.

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

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

12 Q All of that stuff.

13 A No.

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

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

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

1 A Yes.

2 Q Would you judge those exactly the same?

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

5 Q Thank you. So --

6 A And save the \$5,000.

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

11 A All five? No.

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

16 A No.

17 Q Impossible?

18 A Impossible.

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

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

1 Q Right.

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

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

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

19 Q Construction?

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

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

1 A No.

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

6 A No.

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

8 THE COURT: All right. Now redirect.

9 MR. CRISTALLI: Thank you, Your Honor.

10 REDIRECT EXAMINATION

11 BY MR. CRISTALLI:

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

14 A Yes, generally speaking.

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

16 A Yes.

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

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

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

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

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

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

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

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

15 A No.

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

18 A I do, yes.

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

21 A Portions of it, yes.

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

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

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

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

5 A No.

6 Q Okay. Licenses have value; right?

7 A Yes.

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

11 A Sure.

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

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

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

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

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

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

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

6 Q It seems to calculate out that way.

7 A Three minutes an application.

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

13 A No.

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

18 A Yes.

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

22 A Yes.

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

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

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

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

5 A Shared. Yeah.

6 Q -- all five of your applications --

7 A Yes.

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

9 A Correct.

10 Q You provided different information in those
11 applications?

12 A Yes.

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

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

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

1 for his client?

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

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

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

11 Ms. Haar.

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

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

18 MR. HAAR: It was.

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

21 MR. KOCH: The application is online.

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

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

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

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

8 THE COURT: Do you have a copy?

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

11 THE COURT: It doesn't work.

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

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

16 MR. KOCH: Use 20.

17 THE COURT: It's number 20?

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

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

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

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

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

1 MS. HAAR: Yes, Your Honor.

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

5 This is a requested recess.

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

9 THE COURT: Okay.

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

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

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

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

15 Sir, you're still under oath.

16 Did we find our Exhibit 5A?

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

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

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

22 Thank you, Ms. Haar.

23 Any objection to 2019?

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

1 THE COURT: I have no idea.

2 (Pause in the proceedings)

3 THE CLERK: Is it admitted?

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

5 MR. CRISTALLI: Yes. So stipulated.

6 THE COURT: It'll be admitted.

7 (Defendants' Exhibit 2019 admitted)

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

10 CROSS-EXAMINATION

11 BY MS. HAAR:

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

14 A Yes, ma'am.

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

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

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

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

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

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

4 Q But this is GBS's application?

5 A This is my application, yes.

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

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

9 Mr. Cristalli.

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

11 We could put that exhibit back up, 2019.

12 (Pause in the proceedings)

13 THE COURT: Okay. It's up.

14 REDIRECT EXAMINATION

15 BY MR. CRISTALLI:

16 Q Okay. If we could just highlight it.

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

23 A Yes.

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

25 A Yes.

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

5 A Yes.

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

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

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

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

17 (Pause in the proceedings)

18 BY MR. CRISTALLI:

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

20 A Yes.

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

24 A Correct.

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

1 or property address, does it?

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

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

6 A No. Not until three seconds ago.

7 MR. CRISTALLI: No further questions.

8 THE COURT: Anything further from anyone?

9 Mr. Koch.

10 MR. KOCH: I saw that eye roll.

11 THE COURT: It was not an eye roll.

12 MR. KOCH: It was a sigh.

13 THE COURT: It was a sigh.

14 RECROSS-EXAMINATION

15 BY MR. KOCH:

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

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

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

22 A Yes.

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

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

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

4 THE COURT: 5026. Any objection to 5026?

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

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

11 BY MR. KOCH:

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

14 MR. GENTILE: I join the objection.

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

16 MR. GENTILE: Okay.

17 BY MR. KOCH:

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

20 A Okay.

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

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

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

1 medical marijuana list serve?

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

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

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

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

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

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

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

18 Next witness.

19 MR. GENTILE: Steve Gilbert.

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

22 MR. GENTILE: It appears --

23 THE COURT: Oh. [unintelligible].

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

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

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

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

11 MR. SHEVORSKI: Yes, Your Honor.

12 (Pause in the proceedings)

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

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

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

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

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

21 MR. PARKER: Sounds great, Your Honor.

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

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

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

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

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

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

10 MR. KEMP: Right.

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

16 (Pause in the proceedings)

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

19 THE COURT: Than what?

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

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

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

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

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

2 (Pause in the proceedings)

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

10 STEVE GILBERT, PLAINTIFFS' WITNESS, SWORN

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

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

15 MR. GENTILE: Is the microphone working?

16 THE COURT: I don't know.

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

19 DIRECT EXAMINATION

20 BY MR. GENTILE:

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

23 A I will.

24 Q Will you do that for me?

25 A I'll do my best.

1 Q Thank you, sir.

2 Where do you work?

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

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

7 A Since July 1st of 2017.

8 Q July 1st of 2017.

9 A That's correct.

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

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

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

15 A In August of 2009.

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

18 A Division of Public and Behavioral Health.

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

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

23 Q The office of what kind of records?

24 A The Vital Records Office.

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

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

2 A Yes, sir.

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

5 A Yes, sir, I will.

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

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

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

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

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

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

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

24 Q 2001?

25 A Yes. Can I make a correction?

1 THE COURT: Yes, sir.

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

6 Q Still a State employee?

7 A Yes, still a State employee.

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

10 A Okay.

11 Q But tell us your educational background.

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

14 Q From what institution?

15 A California State University San Marcos.

16 Q Okay. And any postgraduate work?

17 A No.

18 Q When did you graduate?

19 A I graduated in 1996.

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

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

1 Q In California?

2 A Yeah, in California.

3 Q Okay.

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

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

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

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

14 A Yes, that's correct.

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

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

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

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

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

4 A That's correct.

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

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

14 Q Let me stop you there for a second.

15 A Sure.

16 Q Were they doing it themselves?

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

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

21 A I did not.

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

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

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

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

7 A No. No, I wasn't.

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

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

17 Q Okay.

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

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

23 A No.

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

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

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

8 A No.

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

10 A Yes. Besides the patient registry regulations.

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

14 A No. No, I didn't.

15 Q We can agree to that?

16 A Yes, we can agree.

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

18 A Yes.

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

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

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

1 that led to where we are today?

2 A I did not.

3 Q Did you vote on it?

4 A I did.

5 Q Okay. Not going to ask you how.

6 A Okay.

7 Q And --

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

9 BY MR. GENTILE:

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

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

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

17 THE WITNESS: Yes. I did read it.

18 BY MR. GENTILE:

19 Q Okay. Did you understand it?

20 A Yes, I did.

21 Q Okay. And you read the whole thing?

22 A Uh-huh.

23 Q Yes?

24 A Yes.

25 Q Okay.

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

4 THE WITNESS: Yes, Your Honor.

5 THE COURT: Okay.

6 BY MR. GENTILE:

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

11 A I do, yes.

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

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

14 Q When you voted on it.

15 A Yeah.

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

21 A Okay.

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

24 A Yes.

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

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

4 A Like the structure?

5 Q Yes.

6 A No.

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

9 A Yes, that's correct.

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

12 A No, he was not.

13 Q He was not?

14 A He wasn't.

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

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

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

20 A The whole medical marijuana program.

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

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

1 Division once we came to Taxation.

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

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

6 Q Oh. You are Health Program Manager III.

7 A Yeah. As of middle of January.

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

11 A Yes.

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

15 A Yes.

16 Q Right? And who is the director?

17 A Currently it's Melanie Young.

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

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

22 Q All right. Mr. Anderson preceded her?

23 A That's correct.

24 Q And Ms. Contine --

25 A Yes.

1 Q -- preceded Mr. Anderson?

2 A Yes, that's correct.

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

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

7 Q Of this year?

8 A Yes.

9 Q Well, congratulations.

10 A Thank you.

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

13 A July.

14 Q July. Okay.

15 A July 1st the budget switched.

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

20 A That's correct.

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

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

3 A For medical marijuana?

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

5 A In --

6 Q '16.

7 A In 2016. No.

8 Q No?

9 A No.

10 Q Am I correct?

11 A Correct.

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

14 A Yes.

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

21 Q Maybe two weeks ago.

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

25 A Yes.

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

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

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

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

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

13 A Okay.

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

17 A Can you repeat the question.

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

20 A Correct.

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

23 A Correct.

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

1 A Yes, that's correct.

2 Q Who were they?

3 A Would you like names, or positions?

4 Q Actually, I'd like both.

5 A Okay. I'll do my --

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

9 A Okay.

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

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

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

18 Q And she's still subordinate to you?

19 A Yes.

20 Q Okay.

21 A She's the --

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

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

1 MR. GENTILE: I'm sorry?

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

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

6 BY MR. GENTILE:

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

9 A Kara Cronkhite.

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

12 A Yes.

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

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

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

17 A For the grade that her position is at.

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

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

24 Q Okay.

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

1 now reports to Kara, manages the auditors.

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

4 Q Okay.

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

7 Q All right.

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

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

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

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

16 BY MR. GENTILE:

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

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

24 Q Okay. And the others report to her?

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

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

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

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

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

15 A We --

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

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

19 Q Ever?

20 A No.

21 Q Okay. They went into effect; right?

22 A Yes.

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

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

2 A I believe so, yes.

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

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

7 Q Did he do it himself?

8 A Deonne's a female.

9 Q Oh.

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

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

14 A Yes.

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

18 A That's correct.

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

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

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

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

4 A Yes, you're correct.

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

8 A Yes.

9 Q Okay. But the people created 453D.

10 A Yes.

11 Q Right?

12 A With question, yes.

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

18 A Yes.

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

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

1 Q All those guys you mentioned before.

2 A Right.

3 Q Yeah.

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

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

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

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

12 A Yes.

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

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

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

17 A Yes.

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

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

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

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

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

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

6 Q I see.

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

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

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

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

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

23 THE WITNESS: I was not, no.

24 BY MR. GENTILE:

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

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

2 A I wouldn't know yes or no.

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

7 A Kara Cronkhite.

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

12 A Yes.

13 Q Okay. What else?

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

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

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

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

1 telling them what to do.

2 Q Who was?

3 A I don't know.

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

6 A Can you repeat that question.

7 Q Let me ask it separately.

8 A Okay.

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

11 A All right.

12 THE COURT: Are the answers right?

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

16 BY MR. GENTILE:

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

22 A Yeah.

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

1 A Yes.

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

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

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

9 A Yes, I do.

10 Q Okay. Were you there?

11 A I -- I --

12 Q You don't remember?

13 A I don't remember.

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

18 A Yes.

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

20 A Yes.

21 Q -- at the time?

22 A Uh-huh.

23 Q You did?

24 A I did, yes.

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

1 hadn't changed yet; am I right?

2 A Yeah, you're correct. Yes.

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

5 A Okay.

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

11 A Yes.

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

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

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

20 A Yes.

21 Q That sound about right when it happened?

22 A Yeah.

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

1 couldn't do with regs for recreational marijuana?

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

4 THE COURT: Overruled. You can answer.

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

7 BY MR. GENTILE:

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

11 A Yes.

12 Q Did you attend the Tax Commission meeting?

13 A I think I may have --

14 Q You think you may have.

15 A -- attended that one, yeah.

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

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

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

22 A Okay.

23 Q Could be wrong. State could be wrong.

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

1 meetings don't change.

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

5 A Yes.

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

8 A Yes.

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

11 A I did not attend that one.

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

13 A No.

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

18 A I was not aware of that.

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

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

1 Q Okay. Basically modified the medical regs?

2 A Yes. That's correct.

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

9 A I do not, no.

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

15 A Inspections and audits?

16 Q Inspections and audits and stuff like that.

17 A Yeah, we performed those.

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

19 A No, I did not.

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

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

1 would a report be created?

2 A Yes.

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

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

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

14 A Yes. There is.

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

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

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

24 A Yes.

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

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

3 A Oh, yes. For sure.

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

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

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

16 A Yes.

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

19 A Yes.

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

22 A Yes, that's correct.

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

1 that fair to say?

2 A Yes, it is.

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

6 A Yes.

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

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

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

13 A Yes, it is.

14 Q Let me have a moment here.

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

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

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

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

4 A Yes.

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

9 A Yes.

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

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

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

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

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

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

1 little bit less.

2 Q Right. But it was [unintelligible].

3 A Yes.

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

6 A That's correct.

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

9 A No.

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

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

17 Q Okay. Thank you.

18 A Uh-huh.

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

20 A No.

21 Q Never question good fortune.

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

24 A Yeah, coming up on 10.

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

1 right?

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

5 Q So eight and two is ten.

6 THE COURT: And what about PERS?

7 THE WITNESS: PERS is six month.

8 BY MR. GENTILE:

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

10 A Yeah.

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

12 A Yes.

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

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

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

21 A Yes.

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

23 A No.

24 Q Okay. There are some limitations.

25 A Yes, there are.

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

5 A Yes. That's my understanding.

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

9 A I agree, yes.

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

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

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

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

22 THE COURT: Which version of the 2018?

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

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

3 MR. GENTILE: I get.

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

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

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

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

11 THE COURT: Okay.

12 MR. GENTILE: He's --

13 THE COURT: I can always hope.

14 BY MR. GENTILE:

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

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

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

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

23 (Pause in the proceedings)

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

1 all at once.

2 BY MR. GENTILE:

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

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

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

11 A Yes.

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

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

22 A There is not.

23 Q Okay. How come?

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

1 THE COURT: So who made that decision?

2 THE WITNESS: I don't know.

3 THE COURT: Okay. Thanks.

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

6 THE COURT: Good work, Shane.

7 BY MR. GENTILE:

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

11 A Yes, I was.

12 Q Okay. Did people send in questions?

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

17 Q And you invited questions on the form itself?

18 A Yes.

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

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

4 A It sounds familiar, yes.

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

7 A Yes.

8 Q Okay. When?

9 A Numerous times.

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

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

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

16 A No, I have not.

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

20 A No, I have not.

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

23 A Yes.

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

25 A Okay.

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

3 A Yes.

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

5 A In NRS?

6 Q NRS.

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

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

13 MR. SHEVORSKI: Objection. Foundation.

14 THE COURT: Overruled. You can answer.

15 THE WITNESS: Can you repeat that question.

16 BY MR. GENTILE:

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

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

1 Q It wouldn't. Thank you.

2 A -- the ability.

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

5 A Yes.

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

9 A Yes.

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

13 A Yeah, that's fair.

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

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

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

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

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

7 MR. GENTILE: Four.

8 THE COURT: Okay.

9 BY MR. GENTILE:

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

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

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

25 MR. GENTILE: Sure. Sure.

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

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

6 BY MR. GENTILE:

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

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

13 MR. PARKER: I have no idea why.

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

16 BY MR. GENTILE:

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

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

23 Q They're two different things.

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

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

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

3 Sir, could you please finish your answer.

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

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

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

18 Q Well, sir -- are you finished?

19 A Yes.

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

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

7 A Yes.

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

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

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

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

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

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

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

4 BY MR. GENTILE:

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

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

9 A I did, yes.

10 Q You know how to read a financial statement?

11 A Yes.

12 Q I want to call your --

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

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

16 BY MR. GENTILE:

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

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

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

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

25 UNIDENTIFIED SPEAKER: Objection, Your Honor.

1 Compound.

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

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

6 MR. GENTILE: No, not compound.

7 BY MR. GENTILE:

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

12 A Yes.

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

15 A Vaguely, yes.

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

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

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

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

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

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

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

8 A Okay.

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

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

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

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

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

3 A Yes.

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

7 A Yes.

8 THE COURT: All right. This a good point to take
9 our break and for me to ask the questions for the lawyers.
10 This is not requested break.

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

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

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

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

22 (Pause in the proceedings)

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

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

1 so we can have a discussion.

2 All right. What's the issue?

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

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

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

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

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

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

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

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

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

23 THE COURT: Okay.

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

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

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

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

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

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

8 Ms. Shell.

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

14 THE COURT: Yesterday was Wednesday.

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

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

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

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

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

25 MR. BALDUCCI: Thank you, Your Honor.

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

2 THE COURT: Yeah.

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

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

10 Okay. Next issue. Privilege log QC notes.

11 (Pause in the proceedings)

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

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

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

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

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

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

5 MS. HAAR: That's another option.

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

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

10 THE COURT: Anybody have an objection?

11 (Pause in the proceedings)

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

13 THE COURT: None of us has seen them.

14 MR. KOCH: Yeah.

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

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

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

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

2 MR. PARKER: Solves mine.

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

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

14 MR. BHIRUD: LOL.

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

18 (Pause in the proceedings)

19 THE COURT: Anything else?

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

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

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

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

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

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

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

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

12 MR. KEMP: Judge, I think --

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

14 MR. KEMP: Yeah.

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

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

18 THE COURT: Half day?

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

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

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

25 THE COURT: After you do your other preliminary

1 injunction hearing.

2 MR. KOCH: Correct.

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

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

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

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

9 THE COURT: Someone else is driving.

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

11 THE COURT: okay.

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

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

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

20 MR. PARKER: I need to be here.

21 THE COURT: Okay.

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

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

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

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

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

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

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

10 (Off-record colloquy)

11 THE COURT: 10, 18, 19.

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

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

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

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

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

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

3 THE COURT: Okay. All right.

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

6 MR. KOCH: We can discuss that.

7 THE COURT: Those things happen.

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

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

16 THE COURT: It's okay.

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

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

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

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

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

THE COURT: Yes.

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

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

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

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

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

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INDEX

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

Christian D. Wuthrich	11/27	29/40/44	48	49
Valerie Fridland	51	81/94		
Mike Viellion	100/155	128/137/		
		144/172	164/173	175
Steve Gilbert	180	-	-	-

* * *

EXHIBITS

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

None admitted

* * *

DEFENDANTS' EXHIBIT NO.

2019	172
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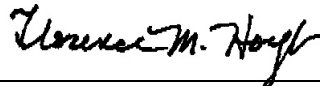
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I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

**FLORENCE HOYT
Las Vegas, Nevada 89146**



FLORENCE M. HOYT, TRANSCRIBER

6/14/19

DATE