

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 VI**

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 VI

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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 6 Transcript	06/10/2019	RA1058 – 1282

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 VI** 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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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 6

MONDAY, JUNE 10, 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.
WILLIAM KEMP, 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 GUTIERREZ, ESQ.

1 LAS VEGAS, NEVADA, MONDAY, JUNE 10, 2019, 10:35 A.M.

2 (Court was called to order)

3 THE COURT: So, counsel, I have one housekeeping
4 matter. I was out of town last week speaking at the
5 Conference of the National Association of Certified Valuers
6 and Appraisers and received information that some flowers had
7 been delivered to my office.

8 MR. GENTILE: What?

9 THE COURT: Wait. I'm not done. Let me make my
10 disclosure. As you guys were leaving the other day I thanked
11 Mr. DiBella because I had been a client of his for his shop
12 for -- since 1986. So I was surprised that I received some
13 beautiful flowers, but I wasn't here to enjoy them. I have
14 marked the note that appears to be handwritten from the
15 DiBella folks. My staff, who enjoyed the flowers, will be
16 sending a thank you note to DiBella Florists.

17 MR. KOCH: The same flower that smiles today
18 tomorrow will be dying, Your Honor.

19 THE COURT: Well, you know, that's the problem with
20 flowers. But they look lovely. But I've made my disclosure.
21 They don't [unintelligible]. My staff loved them, so you guys
22 may get special treatment today, Mr. Gentile, from Dulce.
23 They're beautiful flowers. They did a great job, which is why
24 I've gone there for 30 years.

25 THE CLERK: Is this a Court exhibit?

1 THE COURT: Court Exhibit 1, Court's disclosure.

2 [Unintelligible] on something.

3 MR. SHEVORSKI: Yeah. Your Honor, may I please,
4 real quick?

5 THE COURT: You may.

6 MR. SHEVORSKI: So the parties have agreed to finish
7 the plaintiffs' side. I believe Mr. Parker has some questions
8 for Mr. Gilbert, and then we're going to go to Mr. Jolley to
9 accommodate his schedule, and then restart with State's
10 questioning, cross of Mr. Gilbert.

11 THE COURT: Everybody agree to that process?

12 MR. KEMP: Your Honor, I had three to five more
13 minutes of questions for Mr. Gilbert, and I told Mr. Parker
14 about that.

15 MR. PARKER: No, I have no objection.

16 THE COURT: Okay. So we're going to get Mr. Gilbert
17 up, ask him a few questions on the plaintiffs' side, finish up
18 with the plaintiffs' side. Before anybody else begins their
19 examination we're going to go to Mr. Jolley, finish Mr. Jolley
20 up, and then go back to Mr. Gilbert. So Mr. Gilbert can walk
21 to Starbucks or wherever he wants after we finish this first
22 group, if he's willing to go in and out of security again.

23 All right. Sir, come on back up. Since it's a new
24 day, we're going to swear you in.

25 //

1 STEVE GILBERT, PLAINTIFFS' WITNESS, SWORN

2 THE COURT: Guys, I need you to not talk, because
3 you screw up my record.

4 THE CLERK: Sir, please state --

5 THE COURT: Sorry. Some of you would want the
6 record in a few weeks when you go someplace else.

7 THE COURT: Sir, please state and spell your name
8 for the record.

9 THE WITNESS: Steve Gilbert, S-T-E-V-E
10 G-I-L-B-E-R-T.

11 DIRECT EXAMINATION (Continued)

12 BY MR. KEMP:

13 Q Good morning, Mr. Gilbert. One subject we didn't
14 talk about us distance separation. Is there a requirement
15 that dispensaries be a certain distance between certain types
16 of schools and community facilities?

17 A Yes, there is in the regulations.

18 Q Okay. In other words, they have to be a thousand
19 feet away from say a public school and 300 feet away from a
20 community facility like a church?

21 A Yes. I think that's correct.

22 Q Now -- and then to quote 453D.210(5)(c), quote, "The
23 property is not located within 1,000 feet of public school;"
24 and then (2) 300 feet of community facility." That's your
25 understanding of the law; right?

1 A Yes, it is.

2 Q Okay. Now, in a situation where you had an
3 application which didn't have a specific address, like a Post
4 Office box or a UPS box situation, how was it that the
5 Department could enforce that particular requirement?

6 A That requirement wasn't asked for or scored or
7 evaluated within the application during the criteria. So that
8 would be part of the conditional approval process within the
9 12 months after receiving the conditional.

10 Q So, in other words, you gave people the conditional
11 licenses on say December 6th; right?

12 A December 5th.

13 Q December 5th. And so sometime after that the State
14 would come in and make sure that the separation requirements
15 were met?

16 A Yeah, that's -- that's somewhat correct. So within
17 the 12 months each conditional licensee holder has a certain
18 number of steps to complete before they become operational,
19 and then they would come to us for a final inspection and show
20 us those licensings and zoning.

21 Q Okay. So let's say you get to the point of a final
22 inspection and you find out that someone has built a
23 dispensary, fully built it out within 300 feet of a school.
24 They don't get a license; right?

25 A In that case probably not.

1 Q In that location I mean.

2 A In that location if it's in violation of the zoning.

3 Q Okay. Even if they've spent tens of thousands or
4 even hundreds of thousands of dollars, if they're within
5 300 feet of a school, they don't get a license.

6 A And, again --

7 Q Excuse me. I said school. I meant 300 feet from a
8 church, 1,000 feet from a school.

9 A So in the situation like that upon the final
10 inspection through that 12-month process we would hope that
11 the applicant or the conditional licensee would be working
12 with us, we'd be able to consult him on it. But if we did run
13 into a situation like that, that would be something that would
14 be evaluated by my superiors before something would be revoked
15 or --

16 Q Well, there's nothing to evaluate, is there? It's
17 state law they have to be 300 feet away from a church and a
18 thousand feet -- there's nothing to evaluate.

19 A That's correct. Right.

20 Q Either they're within the 300 feet or a thousand
21 feet or they're not.

22 A But we would look at the situation, yes. But it is
23 -- that's what the law states.

24 Q Well, you say, we would look at it. You're implying
25 there's some discretion that you could give them a license

1 even if they were within 300 feet of a church? You could let
2 them move; right?

3 A Yes, we could let them move.

4 Q But you couldn't give them a license in a restricted
5 area?

6 A If they're in violation of regulations or the
7 statute, no.

8 Q Okay. Because that's a mandate from state law.
9 It's not optional.

10 A That's correct.

11 Q Okay. Now, as I understand, this is from the
12 legislature. Quote, "The distance must be measured from the
13 front door of the proposed marijuana establishment to the
14 closest point of the property line of a school, community
15 facility," and then it goes on, okay, unquote. Is that your
16 understanding?

17 A Yes, it is.

18 Q So if we have a school or a church, we take the
19 property it's on and we find the closest point to the
20 marijuana facility will measure 300 feet. If it's a church,
21 300 feet; right?

22 A Yes.

23 Q And there's nothing new about this 300 foot. It's
24 been in the statute for years; right?

25 A Yeah. Through the medical days.

1 Q Okay. So let me see if I -- if I see exactly how
2 this works, okay. Let's see if we can make so everyone can
3 see it. Okay.

4 Now, I'm assuming that we have a building here --

5 THE COURT: So where is this information from?

6 MR. KEMP: This is just a drawing to illustrate --

7 THE COURT: This is your hypothetical situation?

8 MR. KEMP: Yes, Your Honor, this is hypothetical.

9 THE COURT: Okay. Just making sure.

10 MR. KEMP: I'll probably mark this for the record
11 when we're done.

12 THE COURT: Lovely.

13 BY MR. KEMP:

14 Q Okay. So let's assume we have three parcels ont
15 other side of the street. Are you with me so far, Mr.
16 Gilbert.

17 A Okay.

18 Q Then we have the street, and then -- I'm just trying
19 to figure out where the forbidden area is, all right. So
20 Parcel Number 3 in Building 3 we have a community facility
21 like a daycare or church, okay. Okay? You got me so far?

22 A Yes.

23 Q And so we would go to the corner of the property
24 line and we would measure 300 feet radius, right --

25 A Yes, sir.

1 Q -- and if the building -- or, excuse me, the front
2 door I think is what the statute says. If the front door is
3 within that 300-foot radius, you can't have a dispensary
4 there; right?

5 A That's correct.

6 Q And in this case Building Number 2 in my example is
7 all within the 300-foot radius; right?

8 A Looks to be in the hypothetical, yes.

9 Q But we could have a dispensary in Building Number 1,
10 because that's over 300 feet in this example; right?

11 A Is that the same parcel of land, just two buildings
12 on the parcels?

13 Q Well, it doesn't really matter if it's the same
14 parcel, because for the dispensary you measure from the front
15 door. You don't measure from the parcel.

16 A That'd be great.

17 Q So Building 1 is okay, but Building Number 2 is
18 illegal; right?

19 A Yeah, based on the drawing that would be correct.

20 Q Okay. Now, I don't know if you're familiar with
21 what they do with taverns, but when someone applies for a
22 tavern there's a distance separation requirement from other
23 taverns. Are you familiar with that in general?

24 A No, I'm not.

25 Q Okay. When they apply for taverns they have

1 professional surveyors fill out portions of the application,
2 like Horizon Surveyor, and they have to certify that this
3 proposed tavern location is X number of feet away from any
4 existing tavern. Are you kind of familiar with that?

5 A Yes.

6 Q Okay. Is there any type of requirement that the DOT
7 has that an applicant has to prove that a dispensary is over a
8 thousand feet from a public school and 300 feet from the
9 property line of a church?

10 A Yes, there is. Part of conditional steps that they
11 need to complete within the 12 months is to supply the
12 professional zoning, a zoning approval from the local
13 jurisdiction.

14 Q Okay. Well, you're not relying on the City of
15 Pahrump and Nye County and places like that to enforce the
16 State's separation requirement, are you?

17 A No, we're not. We will look at the separation
18 requirements and compare them to ours.

19 Q You look at it independently, the DOT does?

20 A Yes.

21 Q So, for example, if the City of Las Vegas just
22 didn't pick up on the fact that they were within 300 feet of a
23 church, that doesn't matter, because they're still in
24 violation of state law; right?

25 A That's correct.

1 Q So if we had a hypothetical case like I'm talking
2 about right here, where say the City of Las Vegas approved
3 this, if the DOT finds that you're within 300 feet of the
4 property line of Parcel 3, the building's within 300 feet,
5 that's it, illegal dispensary; right?

6 A Potentially, yes. Yes.

7 Q Well, you keep saying potentially. I mean, this is
8 pretty black and white, isn't it?

9 A If it is in violation of the statute, we would -- or
10 the regulation, we would investigate and see the
11 circumstances.

12 Q Okay. And how is that usually brought to the DOT's
13 attention? Does the church complain about it, does someone in
14 the community complain about it?

15 A I don't recall in my experience getting a complaint
16 for that. Maybe years ago in the medical days it might have
17 been questioned. But I don't recall getting a complaint in
18 the most recent years.

19 Q Okay. I'm glad you brought that up. This
20 separation is both for medical and recreational; right?

21 A Yes, it is.

22 MR. KEMP: Okay. Thank you.

23 THE COURT: Mr. Parker.

24 And then were going to suspend this witness and go
25 to Mr. Jolley; correct?

1 (Pause in the proceedings)

2 MR. PARKER: Your Honor, the --

3 MR. KOCH: I think Mr. Bult had questions after Mr.
4 Parker, but I may be -- I don't want to cut him off.

5 THE COURT: Did you?

6 MR. BULT: No. I think he may cover them. If I
7 have one or two, it's fine.

8 THE COURT: So you'll wave at me if you'd like to
9 ask questions? Because looking over there I didn't see you
10 getting up. Sorry.

11 MR. BULT: No. It's fine.

12 MR. PARKER: Your Honor, I'm going to be here for a
13 little while with Mr. Gilbert. I don't know what Mr. Jolley's
14 time constraints are.

15 MR. KOCH: Yeah. I thought you said a few questions
16 based on last Friday, but --

17 MR. PARKER: No, no. I --

18 THE COURT: So if Mr. Parker's not a few
19 questions --

20 MR. PARKER: I had the whole week and a weekend to
21 be able to prepare for this gentleman, so --

22 THE COURT: All right. Mr. Parker, sit down.

23 Sir, I'm going to let you go get some coffee or
24 something.

25 How long the Mr. Jolley so I can tell Mr. Gilbert

1 when to come back?

2 MR. KOCH: I think my direct will be less than an
3 hour for sure, and then depending upon cross.

4 THE COURT: So hour and a half or so. Go visits
5 Starbucks, walk around. I wouldn't go back to the Washington
6 -- the office.

7 THE WITNESS: Okay.

8 THE COURT: You'll never get back here.

9 THE WITNESS: Yes, Your Honor.

10 THE COURT: All right. So we're going to suspend
11 Mr. Gilbert while we do Mr. Jolley, and then resume. Because
12 Mr. --

13 MR. KEMP: Your Honor, I forgot to mark the exhibit.

14 THE COURT: Would you like to mark it as
15 Demonstrative next in order?

16 MR. KEMP: I would, Your Honor.

17 THE CLERK: That'll be D3. D, demonstrative. It's
18 my codes so that I know what it is. The Ds don't go back to
19 the jury.

20 MR. PARKER: Your Honor, while he's doing that I
21 have I have been able to avoid the 17th, so if the Court wants
22 to use the 17th, I'm available on the 17th.

23 THE COURT: Okay. So far it's booked today and
24 tomorrow.

25 MR. SHEVORSKI: 17 is fine with the State, Your

1 Honor.

2 THE COURT: Dan was talking about booking something
3 when you guys hadn't. So let's see what he booked. He booked
4 a settlement conference all day on the 17th. But I have time
5 later in that week.

6 MR. KOCH: I think we talked the 18th and 19th for
7 our case, Your Honor. Can I call Mr. Jolley now?

8 THE COURT: Yes, you may.

9 So do you want me to book the 18th and 19th before
10 Dan gives them away to somebody else? Everybody okay coming
11 on the 18th and 19th? Anybody have a problem with the 18th or
12 19th?

13 MR. SHEVORSKI: It's fine with the State, Your
14 Honor.

15 MR. GENTILE: I have one, but I also have other
16 lawyers that are here, so I could -- we'll deal with it.

17 THE COURT: So we're going to book the 18th and
18 19th. Don't let Dan set anything else.

19 ANDREW JOLLEY, DEFENDANTS' WITNESS, SWORN

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

22 THE WITNESS: Andrew Jolley, A-N-D-R-E-W
23 J-O-L-L-E-Y.

24 THE COURT: Sir, there's a pitcher of water there,
25 there's M&Ms in the dispenser, then there's a ton of exhibits

1 counsel may refer you to.

2 MR. KOCH: Just a couple, hopefully.

3 DIRECT EXAMINATION

4 BY MR. KOCH:

5 Q Mr. Jolley, are you involved in the business of
6 marijuana?

7 A Yes.

8 Q When did you first become involved?

9 A Started looking at it in 2013, applied for licenses
10 in '14, opened in '15.

11 Q And prior to that time frame what line of work were
12 you in?

13 A Commercial real estate investments mostly.

14 Q And tell us what -- how you first became involved.
15 How'd you learn of it, and what was the steps that were made
16 to become involved in the business of marijuana?

17 A Believed in the medical benefits of marijuana for
18 quite some time, and also believed that it should be
19 legalized, but I didn't really consider getting into the
20 industry until Nevada passed its laws in the summer of 2013
21 allowing the industry to be commercialized and to issue
22 licenses. I felt that myself and business partner and others
23 would be compelling applicants, and so we applied in 2014 for
24 medical licenses.

25 Q What was the entity that applied for that license?

1 A Nevada Organic Remedies and Henderson Organic
2 Remedies.

3 Q All right. And so you submitted an application in
4 2014. Were you successful in obtaining a license?

5 A Yes.

6 Q And how many licenses were obtained?

7 A We were awarded a production license for Nevada
8 Organic Remedies cultivation and dispensary, and we were also
9 separately awarded a dispensary license for Henderson Organic
10 Remedies, another entity that I am the owner of.

11 Q All right. And after award of that license did you
12 -- did Nevada Organic Remedies move forward and actually open
13 a location?

14 A Yes.

15 Q When did that location open?

16 A Our cultivation opened in October of '15, our
17 production in December of '15, and our dispensary opened on
18 December 10th of 2015.

19 Q What was your role with respect to the operation of
20 those establishments?

21 A Owner and CEO.

22 Q Okay. Were you familiar with the processes and
23 regulations that apply to those establishments?

24 A Yes.

25 Q And other than your direct involvement with your

1 specific dispensaries or cultivation locations were you
2 involved personally in the industry itself outside of your
3 business?

4 A Yes. I was involved in the industry in a number of
5 different ways. I was one of the founding members of the
6 Nevada Dispensary Association. I was a board member, and then
7 I became the president of the NDA, a position that I held for
8 three years. I also helped out in the Question 2 campaign and
9 a couple of other panels and boards that I've been a part of.

10 Q Nevada Dispensary Association. That's been
11 mentioned a few times during the course of this hearing. Can
12 you tell us a little bit more about that organization. What
13 was its purpose?

14 A Sure. The Nevada Dispensary Association was formed
15 actually after Clark County held its special use permit
16 hearings and business license hearings in early 2014. We were
17 a part of that. And then that organization ultimately became
18 the preeminent industry association for the state of Nevada.
19 We during my tenure as president represented well over
20 90 percent of dispensary owners in the state and were involved
21 in, you know, a lot of different regulatory discussions,
22 community involvement, you know, a lot of different facets of
23 representing the best interests of the community and the
24 industry.

25 Q When you say the NDA represented 90 percent or more

1 of dispensaries what does that mean exactly? Do they have to
2 join, or did you force them to join?

3 A No. So that means that they voluntarily joined the
4 organization, signed our bylaws, and paid dues.

5 Q Were any of the -- you looked at plaintiff parties
6 that are part of this case here?

7 A Yes.

8 Q Were any of those entities part of the NDA during
9 your time that you were on the board?

10 A I believe all or the majority of them were, yes.

11 Q And you served as a board member and as president of
12 that organization?

13 A Initially as a board member, and then became
14 president when that seat was vacated.

15 Q Okay. When did you become president, if you recall?

16 A I believe it was early 2016. There was a president
17 who served for a short term, and then when he left I was asked
18 to run for president by several members of the Association.

19 Q Yeah. And you ran and you apparently were elected
20 as president? Was there actually an election?

21 A Very prestigious, a very tight race. No. I --
22 yeah, several members approached me, including the former
23 president -- two former presidents, and asked me to run, and I
24 reluctantly did that because I felt like I could add some
25 value.

1 Q Okay. Who were the former presidents that asked you
2 to run?

3 A Neil Tomlinson was the first president, an attorney
4 here in town, and he stepped down, and Shane Terry was the
5 president for just a couple of months, and he ended up leaving
6 the company that he was leading, and so when he stepped down
7 from his position with that company he also stepped down from
8 the president of the NDA.

9 Q All right. You said you became president in 2016.
10 During the time you were president did the NDA work on the
11 initiative Question 2 that you referenced?

12 A The NDA didn't get involved directly, but because of
13 my involvement in the industry generally I was asked to be a
14 part of the Question 2 team, if you will. And I cared about
15 it a lot, and so I ended up becoming very involved in the
16 campaign.

17 Q Okay. And so you were aware of what Question 2 was
18 proposing?

19 A Yes. Generally, yes.

20 Q Okay. What did you understand the purpose of that
21 initiative to be?

22 A Question 2 was a ballot initiative proposing to make
23 marijuana recreationally available in the state of Nevada for
24 adults. It provided provisions that would essentially double
25 the number of dispensary licenses in the state. Where there

1 were 60-something, 63, 64 medical only dispensaries, Question
2 2 allowed for essentially a doubling of those licenses
3 allocated by population to various jurisdictions throughout
4 the state. It allowed for adults over the age of 21 to
5 purchase limited quantities of marijuana and marijuana
6 products from licensed dispensaries throughout the state. And
7 several other provisions. But that's generally what the
8 purpose was.

9 Q All right. Question 2 passed, we know. After
10 Question 2 passed were you involved personally with any
11 further steps to sort of implement Question 2?

12 A So the Nevada Dispensary Association has been and
13 was asked to be involved before, during, and after the passage
14 of Question 2 intimately, worked very closely with the State
15 and, of course, with owners and other stakeholders in the
16 community, law enforcement, et cetera, to be very thoughtful
17 and careful about how Question 2 was implemented, the
18 regulations surrounding Question 2. In addition to that I was
19 asked to be on a couple of different panels, one for Clark
20 County, the Green Ribbon Panel, and I was asked to be on a
21 working group for the Governor's Task Force for the
22 implementation of Question 2, the recreational program.

23 Q All right. That Task Force, we've heard some
24 testimony about that previously. What was your specific role?
25 You were on the working group. What did you do?

1 A I was on the working group for the retail
2 subcommittee, so the committee that I was on, I don't remember
3 exactly how many members there were, eight or twelve, in that
4 range. We were tasked with coming up with recommendations for
5 the regulations regarding dispensaries under the recreational
6 program. So everything from, you know, application to
7 operation to marketing to, you know, inventory controls and
8 other operational issues.

9 Q Okay. Let's have you turn -- we're looking for
10 Exhibit 2009, find the binder.

11 MR. KOCH: If I could approach, Your Honor.

12 THE COURT: You may.

13 (Pause in the proceedings)

14 BY MR. KOCH:

15 Q Exhibit 2009 has been identified previously as the
16 Task Force report that was prepared, final report May 2017.
17 Have you seen this report before?

18 A Yes.

19 Q All right. Ask you just about a couple of the
20 recommendations that were there. If you could turn to page
21 2515, Bates Number 2515.

22 A Okay.

23 Q And that should be titled Application Licensing
24 Requirements. You see that?

25 A Yes.]

1 Q Going to ask you about the recommendation under the
2 Application Process section, which says, "The Task Force
3 recommends that the qualifications for licensure of a
4 marijuana establishment in the impartial numerically scored
5 bidding process for retail marijuana stores be maintained as
6 in the medical marijuana program."

7 First let's stop there. Was there some carryover
8 from medical marijuana with respect to the application process
9 for recreation that you're aware?

10 A Yes. There's quite a bit of overlap.

11 Q Okay. And then it goes on to say, "Except for a
12 change in how local jurisdictions participate in the selection
13 of locations, the Department of Taxation should rank the
14 applicants based on applicants' qualifications without respect
15 to the planned location of their business. The local
16 government should be responsible for working with the rank
17 list of applicants prepared by the Department of Taxation to
18 determine acceptable locations based on requirements within
19 the respective jurisdiction."

20 Were you aware of that recommendation?

21 A Yes.

22 Q Was that something that was discussed among Task
23 Force members?

24 A Yes.

25 Q What was the purpose of that recommendation as you

1 understood it?

2 A It was to improve upon the previous process, which
3 was very problematic with respect to location selection. So
4 back in 2014 on the medical program there was a requirement to
5 have the location identified and secured, owned or leased, in
6 order to submit an application. Not only that, but certain
7 jurisdictions, like Clark County, for example, actually issued
8 special use permits to applicants prior to when the State went
9 through its competitive application scoring process which
10 occurred -- came out in November of '14.

11 So that created a lot of confusion in the community.
12 There were something like 500 applications in 2014 for 60-
13 something licenses, and so the requirement to have an
14 applicant secure a location prior to applying created a lot of
15 collateral damage in the community. As you can imagine, you
16 had almost 80 or 90 percent of the locations that were secured
17 went unused, essentially. And so in order to avoid that same
18 problem there was a recommendation made here and ultimately
19 carried out by the Department not to make a location selection
20 a requirement to apply. It's simply inefficient, it was
21 problematic, and created a lot of headaches for people.

22 Now, being in the real estate industry, it was an
23 advantage to me, because we own shopping centers and we were
24 able to secure locations. But if you look at totality of what
25 happened in 2014, there was a lot of problems with requiring

1 applicants to secure a location prior to applying. You had so
2 many people go out and sign a lease or in some cases even buy
3 buildings, and those applicants ultimately didn't -- many of
4 them did not get a license from the State, and so it led to a
5 lot of inefficiency problems, even lawsuits and other issues
6 with that.

7 So this, in my opinion, was an effort to learn from
8 that past mistake in 2014 and improve upon it and essentially
9 allow the State to decide who gets the license and for the
10 local jurisdictions to decide where those licenses would go.
11 Which is how it's done for many other industries and other
12 examples.

13 Q And let me ask. Was this issue or this change, was
14 this known in the industry, to the extent you know?

15 A Everyone that I talked to, and keep in mind, I
16 talked to a lot of people, was aware of this and supported it.

17 MR. CRISTALLI: Objection. Calls for speculation.

18 THE COURT: Overruled.

19 THE WITNESS: In my experience everyone that I
20 talked to knew about it and, not only that, was in favor of
21 it, because of the past problems that were encountered in
22 2014.

23 BY MR. KOCH:

24 Q I read the regulations more generally. Did you
25 participate at all with respect to the Department and its

1 process for drafting and adopting regulations?

2 A Well, I was certainly aware of the process and kept
3 close tabs on the process and attended many hearings. And so
4 in that respect I was certainly aware of the regulatory
5 process.

6 Q What type of hearings were held on the regulations?

7 A Well, any time there are new regulations adopted
8 there's a requirement to have public hearings and take public
9 comment. But not only that, stepping back even before the
10 regulations were adopted the Task Force met under a public --
11 open meeting rules, and so there was public comment during
12 each of the Task Force meetings. There was, you know, public
13 comment regarding temporary regulations. There was public
14 comment on hearings regarding the permanent regulations. So
15 there were several steps along the way in which people could
16 have voiced their concerns or opinions about the regulations
17 and more specifically, the application process itself.

18 Q All right. And if someone had an objection to a
19 proposed regulation brought up to Task Force, would that
20 objection would be considered by the Task Force?

21 A Well, I guess it would depend on what you mean by
22 considered. But, yeah, there were certainly many
23 opportunities for industry people, owners, operators, and the
24 public to comment on the proposed recommendations from the
25 Task Force, but also the actual regulations that were

1 ultimately promulgated.

2 Q And you said you attended some of the public
3 hearings on the regulations?

4 A Yes.

5 Q You said temporary regulations. Were there
6 temporary regulations that were adopted at some point?

7 A So Question 2 passed in November of 2016. It called
8 for the recreational program, if I remember correctly, to be
9 operational by 2018. But piggybacking off of what other
10 states had done, Nevada decided to actually start allowing
11 recreational sales in advance of that deadline, and that was
12 through a program called Early Start. And I believe in order
13 to get the Early Start Program up and running, which allowed
14 for recreational sales to take place essentially under the
15 medical regime starting in July 1st of 2017, I believe that
16 there were some temporary regulations that were put in place
17 to support that effort.

18 Q Did NOR or Nevada Organic Remedies -- did it apply
19 to open under the Early Start Program?

20 A Yes.

21 Q In most of the industry, as far as you're aware of,
22 apply to be open under the Early Start Program?

23 A Most dispensaries applied and pursued -- applied for
24 and pursued the Early Start Program. Not all either qualified
25 or could get their affairs in order to actually do that, but

1 as far as I can recall, the vast majority did apply for that.

2 Q So not everyone that applied actually got a license
3 under Early Start?

4 A Well, there were certain conditions that had to be
5 met. And, you know, looking back there were at least one
6 dispensary that I'm familiar with, possibly multiple who
7 simply were not in a position to comply with all the
8 requirements to be open on July 1 for the Early Start Program.

9 Q And then let's move forward to the -- closer to the
10 time frame we're talking about specifically here in the 2018
11 application process. Were you aware that final regulations
12 were adopted by the Department of Taxation at some point?

13 A Yes.

14 Q And do you know when those were adopted?

15 A I believe final regulations were adopted in early
16 2018, maybe July of '18.

17 Q Were those regulations promulgated to the industry?

18 A Absolutely. Everyone was made aware of them through
19 various means, the lists are through public publication, et
20 cetera.

21 Q Ask about that for a second. The Listserv you've
22 mentioned, what is that?

23 A Starting back in 2014 the Department at that time
24 DPBH, The Department of Public and Behavioral Health, who
25 administered the medical marijuana program, started the

1 Listserv, which has continued ever since that time, which is
2 essentially a email distribution list to keep industry folks,
3 as well as anyone who wants to, up to speed on what is
4 happening with the medical and now recreational programs. The
5 State also requires each medical and recreational marijuana
6 licensee to have a designated point of contact, which includes
7 an email address specifically so the Department can keep
8 abreast of what's going on.

9 Q All right. And did NOR receive communications
10 through that Listserv?

11 A Yeah. We have many people in our company who are on
12 that Listserv distribution list.

13 Q And were there communications in 2018 to that
14 Listserv about the application process for recreational
15 marijuana licenses?

16 A There were several communications, emails regarding
17 the application process, not only in '18, but starting in '17.

18 Q Okay. So did you feel like you were aware of the
19 process and how it would be carried out?

20 A Yes, I believe anyone and everyone who is part of
21 the industry was aware of the process and what was going on,
22 and I certainly was.

23 Q Were you aware that applications would be sought or
24 received by the Department to open -- to receive an additional
25 recreational marijuana license?

1 A Yes.

2 Q Okay. And did NOR start working on applications to
3 submit for that process?

4 A We started months and months in advance, yes.

5 Q How far in advance of when the applications were due
6 did NOR start?

7 A I guess in a way we started preparing our
8 application after Question 2 was passed. I mean, we -- you
9 know, based on the language and the ballot initiative we knew
10 it would be a competitive application process, and we made
11 certain assumptions about the types of information the
12 Department would seek in evaluating applications. And so we
13 spoke with legal counsel and met internally very early on,
14 meaning, you know, end of '16 through '17 and into '18.
15 Started laying the groundwork for a compelling application and
16 spent significant amount of time and energy putting the pieces
17 in place to be a good applicant, a good applicant meaning an
18 applicant that we thought would be compelling for the State
19 and its review of what we knew would be hundreds and hundreds
20 of applications.

21 Q Did you ever consider just resubmitting your medical
22 application that you filed in 2014?

23 A I never considered that. We had people that, you
24 know, brought that up, you know, can we leverage the hundreds
25 and hundreds of pages of documents that we wrote and put

1 together from 2014, but I knew that wouldn't be enough. The
2 industry had changed, the world had changed from 2014 to 2018.
3 In 2014 no one in Nevada had experienced running a regulated
4 marijuana company. By 2018 it was already a very competitive
5 industry. And I take nothing for granted, and so we made a
6 concerted effort as early as possible to start laying the
7 groundwork for a compelling application.

8 Q How many people did NOR have work on its
9 applications?

10 A I was primarily responsible for it, beginning to
11 end. But we had dozens of people inside and outside the
12 company working on various aspects of the application. So we
13 hired counsel who has a team of people to help with that, but
14 we also enlisted the help of several people inside the company
15 and a few consultants, as well, to help us prepare the
16 application.

17 Q Do you have an estimate of how much actual time, how
18 many hours were spent to prepare those applications?

19 A So we started doing meetings and conference calls
20 probably in the summer of 2017. And so between the time we
21 started actively having meetings and working on aspects of the
22 application until it was submitted in September of '18, I
23 would only guess that there were thousands of man hours spent
24 and, you know, considerable financial investment, as well,
25 preparing an application that we were proud of and that we

1 felt represented our collective efforts as a company.

2 Q How long was the application that NOR submitted, how
3 many pages?

4 A I don't remember the exact number of pages, but it
5 was in the thousands, you know, it was well over 1200 pages.

6 Q One of the issues in this case is the question of
7 whether multiple applications would be submitted or whether
8 one application would be submitted for multiple jurisdictions.
9 What did NOR do with respect to preparation of one or more
10 applications?

11 A Well, that was a good question, because we didn't
12 know how the State would accept applications. We didn't know
13 early, early on whether or not you had to submit a separate
14 application for each jurisdiction for which you were applying
15 or if there would be one application that could be submitted
16 for multiple jurisdictions. It ended up being the case that
17 the State decided that only one application was required, and
18 then you would essentially check the boxes for the various
19 jurisdictions that you wanted to apply for. And the fees
20 would then be adjusted according to the number of
21 jurisdictions for which you're applying.

22 Q And so it sounds like NOR did not actually prepare
23 from start to finish a separate application for each
24 jurisdiction, is that right?

25 A No, we did not. We prepared a single application

1 that we felt would meet the requirements for the State and
2 apply in all those various jurisdictions and then essentially
3 selected the various jurisdictions that we wanted to apply in
4 which I believe were eight.

5 Q Does it surprise you that NOR received essentially
6 the same score in each of the jurisdictions for which an
7 application was submitted?

8 A No, because it was the same application. Everyone
9 knew that, and it shouldn't be a surprise to anybody. But I
10 believe our scores did vary slightly if I'm not mistaking.

11 Q How slightly, do you know?

12 A I don't remember, but it was a very small amount.
13 And when I inquired about that and discussed it with our team
14 and with our counsel I think we ultimately theorized that it
15 had to do with how the size of the proposed marijuana facility
16 might meet the needs of the community, because the size of a
17 community and the needs of the community may be different for
18 the different jurisdictions for which we are applying. And so
19 we theorized that that could have had an impact on the slight
20 variance in our score. But essentially we received the same
21 score.

22 MR. CRISTALLI: Objection. That calls for
23 speculation.

24 THE COURT: Overruled.

25 //

1 BY MR. KOCH:

2 Q And you've actually reviewed the scores that NOR
3 received for each jurisdiction?

4 A Yes.

5 Q Those scores, are they all within a point or so of
6 each other?

7 A I believe so, yes.

8 Q So when we say a slight variance, less than a point?

9 A I actually don't remember, but it's very minimal.

10 Q And did NOR submit its application in a timely
11 fashion?

12 A Yes.

13 Q There's been some question in this case regarding
14 the disclosure of ownership as part of the application. And
15 currently are there other owners than you and the original
16 owners of NOR?

17 A Yes.

18 MR. KOCH: Exhibit 5026. If I can approach, again.

19 THE CLERK: That's proposed.

20 THE WITNESS: Proposed?

21 THE COURT: So can we take it down. Is there a
22 stipulation of 5026?

23 MR. CRISTALLI: Haven't seen it.

24 MR. KOCH: It's the transcript letter.

25 THE COURT: Hold on a second, sir.

1 MR. KOCH: All right. No objection. Move to admit
2 5026, and also 5025 while we're at it.

3 THE COURT: Any objection to 5025, 5026?

4 MR. KEMP: No, Your Honor.

5 THE COURT: They'll be admitted.

6 (Defendants' Exhibits 5025 and 5026 admitted)

7 MR. CRISTALLI: No, Your Honor.

8 THE COURT: Okay. Now you can display it. Thank
9 you.

10 BY MR. KOCH:

11 Q All right. It's the last one in there. And, Mr.
12 Jolley, Exhibit 5026, can you tell us what this is.

13 A This is a letter from the Department of Taxation
14 dated August 20th, 2018, to Amanda Connor on behalf of Nevada
15 Organic Remedies.

16 Q And Amanda Connor, what was her role with respect to
17 Nevada Organic Remedies?

18 A Legal counsel.

19 Q Okay. And the subject is MME Ownership Change. Was
20 Nevada Organic Remedies going through an ownership change at
21 that point in time?

22 A Yes.

23 Q And can you describe for us what you understood this
24 letter to be.

25 A Sure. Earlier in the year we had decided to sell a

1 portion of the company to a group called Green Growth Brands,
2 GGB. And so this letter is confirming that the State had
3 reviewed and approved that ownership change and lists the
4 entities and individuals related to each entity that
5 constitute the owners of Nevada Organic Remedies.

6 Q Okay. There's an entity named GGB Nevada LLC, and
7 then below that, Xanthic Biopharma Inc. What are those
8 entities and their relationship to Nevada Organic Remedies?

9 A So GGB Nevada LLC was acquiring a 95 percent
10 ownership of Nevada Organic Remedies. GGB Nevada LLC is
11 wholly owned by Xanthic Biopharma Inc., which has board
12 members and officers listed below that.

13 Q Okay. And we turn to the next page. There are
14 other individuals listed there, yourself, Stephen Byrne,
15 Patrick Byrne, Harvest Dispensaries and Liesl Sicz and Darren
16 Peterson. What was their role with respect to Nevada Organic
17 Remedies?

18 A These five individuals were the original owners of
19 Nevada Organic Remedies who were in place in 2014. And it was
20 these five individuals who were selling a portion of the
21 company to Green Growth Brands, to GGB Nevada.

22 Q And that letter, as of the time it was written, did
23 that accurately depict the ownership structure of Nevada
24 Organic Remedies?

25 A Yes.

1 Q Let's turn to the prior exhibit, 5025. Can you tell
2 us what this document is, it's -- well, go ahead and tell us
3 what you understand this to be.

4 A So 5025 is a section of the application submitted in
5 September of 2018, 5.2.10.1, organizational charts, which is
6 responsive to part of the application regarding owners,
7 officers, board members, et cetera of the company.

8 Q Let's turn to the second page of that document,
9 which is Bates Number 1427. And there's a chart up there. If
10 you could tell us what this chart depicts, please.

11 A Sure. This is a chart that describes the owners of
12 Nevada Organic Remedies, their respective ownership
13 percentages and the case of Xanthic Biopharma, a publicly
14 traded company, the board members and officers of that
15 company.

16 Q And then down below it says, "Nevada Organic
17 Remedies LLC officers." Who are they?

18 A So these are the people that -- the executives that
19 actually run Nevada Organic Remedies. So we felt that it was
20 important to provide thorough and accurate representation of
21 the applicant, Nevada Organic Remedies and who owns and runs
22 the company.

23 Q So was it disclosed to the Department of Taxation as
24 part of NOR's application, the owners, officers, and board
25 members of the entity?

1 A Yes, it's throughout the entire application. I
2 think there's -- I counted at least four cases of this
3 disclosure just in this section alone.

4 Q And to the individuals listed there, did they obtain
5 agent cards?

6 A The individuals, yes.

7 Q And what's the purpose of an agent card as you
8 understand it?

9 A Both the medical and recreational programs require
10 that owners and officers and employees of a medical marijuana
11 or a recreational marijuana facility obtain an agent card
12 before -- as part of its approval process. And that is a way
13 for the State to essentially monitor who is involved in the
14 industry, make sure they can pass a background check. And
15 it's part of the regulatory regime for overseeing the program.

16 Q All right. Let me have you turn to -- a few more
17 pages in, Bates Number 1435. Can you tell us what this part
18 of the document depicts.

19 A So we wanted to provide some detail as to who the
20 owners of the company are. And so we included, you know,
21 small pictures, head shots, name, title and role briefly
22 describing who all of the individuals are affiliated with the
23 company.

24 Q And did NOR list every shareholder? Xanthic was a
25 public company -- NOR list every shareholder of Xanthic?

1 A No, I don't believe that was a requirement.

2 Q Let's look at, same binder, should be Exhibit 5023.
3 And Exhibit 5023 is titled "Licensed entity, owners, officers,
4 board members as of May 1st, 2019." Do you know if the
5 Department kept a list of owners, officer, and board members
6 of each licensed entity?

7 A Yes, I believe it does.

8 Q And if we look in this document there aren't Bates
9 numbers, but we're going to look alphabetically to find Nevada
10 Organic Remedies, which is about halfway through. Let me know
11 when you get there.

12 A Yep, I've found it.

13 Q All right. So the first indication that I see of
14 Nevada Organic Remedies --

15 MR. KOCH: Actually, Brian, if you could go up one.
16 Yeah, there we go.

17 BY MR. KOCH:

18 Q It's right under Nevada Natural Medicines, and it
19 says, "T56" to the left of that. Do you know what that
20 indicates, the T56?

21 A That could be our application number. It just says,
22 "ID" at the top of the column.

23 Q Okay. And listed here, it says, "Distributor for
24 the license type." Did NOR have a distributor license?

25 A Yes.

1 Q Okay. And it lists a number of individuals there in
2 the T56 as owners, officers, and board members; is that right?

3 A Yes.

4 Q Did NOR try to keep the Department up to date with
5 respect to who was an owner, officer, or board member of the
6 company?

7 A Yes, we're required to. And we have made every
8 effort to do that, yes.

9 Q If that changed, would NOR update the Department?

10 A Absolutely.

11 Q Okay. Let's turn a couple more pages in. We're
12 going to go to the ID that appear to be associated with the
13 application in this case, [unintelligible] RD215. Let me know
14 when you're there.

15 A Okay.

16 Q All right. So we have RD215 -- actually let me --
17 if I could first point you down to the bottom of that page
18 216. Do you see that?

19 A Yes.

20 Q And on 216 you're listed first as an owner/officer.
21 Do you see that?

22 A Yes.

23 Q Was that accurate that you were an owner/officer of
24 Nevada Organic Remedies for the retail dispensary license in
25 Las Vegas?

1 A Yes.

2 Q And it continues on to the next page. There's a
3 number of individuals on RD216 including Patrick Byrne and
4 Stephen Byrne at the top of that page. Do you see that?

5 A Yes.

6 Q And those, also, were owners and officers with
7 respect to 216?

8 A Yes, that's correct.

9 Q Okay. One of the questions that I had is on -- if
10 we go back to 215, right above that, there's a number of
11 individuals listed again for Unincorporated Clark County.
12 Patrick Byrne is the first one listed there, and I didn't see
13 your name or Steve Byrne. Do you know why you're not on
14 there?

15 A I'm not sure. This is -- I didn't prepare this
16 list. I believe this is the State's list that they publish.
17 But I don't know why we wouldn't be. I think we were listed
18 on all the other Nevada Organic Remedies sections.

19 Q And you and Steve Byrne were listed on the
20 application for all the licenses, all the applications that
21 were submitted to the Department; is that right?

22 A The ownership was the same for every application
23 that we applied for. I don't know why -- if we were excluded,
24 I don't know why that would have been the case. It may have
25 been a clerical error, I'm not sure.

1 Q If fact if we go look at RD217 on the following
2 page, again. You're listed there as an owner/officer for
3 North Las Vegas; is that right?

4 A RD217?

5 Q Right. On the following page.

6 A Yes.

7 Q And RD218, also? Next page.

8 A Yes, that's correct. Yeah.

9 Q So as far as you're aware, you did provide that list
10 of names of owners and officers to the State; is that right?

11 A Yes. We provided a complete and accurate list of
12 all owners of Nevada Organic Remedies.

13 Q And the LLC itself, who are the managers of Nevada
14 Organic Remedies LLC listed with the Secretary of State?

15 A I believe myself and Steve Byrne.

16 Q Why didn't you just list yourself and Steve Byrne in
17 the application?

18 A I don't think that was what the application was
19 calling for. I believe the application was asking just like
20 in our ownership transfer letter that we had received from the
21 State a full and accurate listing of all owners and board
22 members and officers, as well.

23 Q All right. After NOR submitted its application to
24 the Department what happened between then and December of
25 2018, as far as your application, any communication, what was

1 that period of time like for NOR?

2 A Well, it was business as usual for us. We were just
3 operating the business. There was nothing to do regarding the
4 applications themselves. We didn't have any direct
5 communication with anyone that was, you know, scoring the
6 applications or reviewing them as far as I know.

7 Q Did you call -- did you know who the evaluators were
8 that were hired by the Department?

9 A No.

10 Q Did you talk to any of the evaluators during that
11 period of time?

12 A No.

13 Q Did you speak to any of the Department employees
14 with respect to the status of NOR's application during that
15 period of time?

16 A No.

17 MR. PARKER: I'm sorry. What period of time was
18 that again?

19 MR. KOCH: The time the application was submitted
20 until the awards or decisions were made in December of 2018.

21 MR. PARKER: Thank you very much.

22 BY MR. KOCH:

23 Q One of the issues that's been raised as part of a
24 motion in this case is compliance. What does compliance mean
25 to you in the context of this industry?

1 A We have about 256 pages of regulations that we are
2 required to comply with. And so we're a highly regulated
3 industry. And so, you know, a big part of running a marijuana
4 company here in the State of Nevada is understanding and
5 complying with those regulations, something we take very
6 seriously.

7 Q And when Mr. Ritter was here he testified about what
8 he called a deficiency. What's a deficiency in this industry?

9 A Deficiency is when the Department finds that a
10 licensee is not in compliance with certain aspects of the
11 regulations, and they issue a formal letter stating what those
12 deficiencies are.

13 Q Has NOR ever received a deficiency letter?

14 A Yes, I believe everyone in the industry has received
15 deficiencies.

16 Q And when NOR receives a deficiency letter does it
17 take steps to respond to it?

18 A Absolutely. So we're required to respond to a
19 letter of deficiency within a certain number of days, I
20 believe it's 10 days. And, yes, we've always done that and
21 always sought to comply with all regulations.

22 Q There's been one allegation made in this case about
23 NOR making a sale of marijuana to an individual who was
24 underage. Are you aware of that allegation?

25 A Yes. But I believe it was actually Henderson

1 Organic Remedies, not Nevada Organic Remedies, a sister
2 company, if you will. Another entity that I'm also an owner
3 of.

4 Q Okay. Was there an issue with a sale of marijuana
5 to an individual who was underage that you're aware of?

6 A Yes.

7 Q Okay. And what happened after that issue? Well,
8 how did NOR -- HOR become aware of that issue?

9 A So there was an incident where we were conducting an
10 internal audit to make sure we were following all of the
11 regulations, and we discovered that we had made a sale to
12 someone who I believe may have been 19 or 20 years of age, so
13 not the 21 years required. Under the medical program, you
14 know, you can have a medical card if you're under that age,
15 but under the recreational program you're required to be 21
16 years or older to purchase.

17 We uncovered that one of our employees had
18 accidentally checked in someone who was under the age of 21.
19 We caught that, we found it out, we did an internal
20 investigation to understand why that happened. And then we
21 disclosed that voluntarily to the State letting them know what
22 our course of correction was. In this specific case I believe
23 we terminated the employee who accidentally allowed that
24 person who was under the age of 21 to purchase products. And
25 we reprimanded -- officially reprimanded, you know, through

1 written sanctioned two other employees that were involved in
2 the transaction.

3 Q And so you self reported that transaction; is that
4 right?

5 A Yes, we self reported it.

6 Q And did the Department respond to your self report?

7 A Yes, they did.

8 Q And do you know how they responded?

9 A I don't remember exactly, but I think that they
10 acknowledged the plan of correction that we submitted along
11 with the self reporting of the incident.

12 Q And is this the only time that you've had a
13 discussion or communication with the Department about
14 correcting an incident and a plan of correction?

15 A No, that's part of any deficiency. In this case we
16 weren't issued a deficiency because we discovered the issue
17 before the State did. But in a normal situation, let's say
18 the State came in and performed an audit and found, for
19 example, a box sitting on the floor when it should be elevated
20 off the floor a certain number of inches, you know, in those
21 cases we have always responded within the designated required
22 time frame with a plan of correction.

23 Q All right. And are you aware of any of the
24 companies either that are parties to this case or that operate
25 in the industry who have operated since 2014 without a

1 deficiency?

2 A I'm not aware of a single company that has operated
3 without a deficiency.

4 MR. CRISTALLI: Objection. Calls for speculation.

5 THE COURT: Overruled.

6 BY MR. KOCH:

7 Q Let's pick your knowledge about the process the
8 Department used. You were generally aware of the process the
9 Department used to receive and score the applications?

10 A Yes. We knew that was forthcoming after Question 2
11 passed and the State made certain announcements along the way
12 leading up to the application process itself. But, yes, I was
13 aware of that.

14 Q Were there any improprieties or anything that you
15 believe was done wrong by the Department through the course of
16 that process?

17 A Not that I'm aware of.

18 MR. CRISTALLI: Objection. Speculation.

19 THE COURT: Overruled.

20 BY MR. KOCH:

21 Q Anything you might have done differently if you were
22 running the process?

23 A Well, I think it's easy to Monday morning
24 quarterback lots of things, especially when you look at the
25 context, right, you have a State that had only a couple years

1 previously implemented what is not almost a billion-dollar
2 industry from nothing, right. And these were not folks who
3 had experience regulating marijuana programs before. First it
4 was the Department of Health, and then later the Department of
5 Taxation.

6 So, yeah, I think we can all sit back and nitpick
7 certain things that could have been approved upon. But
8 overall I think the Department did a phenomenal job of
9 communicating its intentions following the ballot initiative,
10 implementing regulations that are responsive to the directives
11 and the ballot initiative. They provided ample opportunities
12 for public comment and feedback from the industry itself. I
13 don't recall a single individual in this room or among the
14 plaintiffs who stood up at any of the hearings and criticized
15 this application process or called into question or who made
16 significant criticisms of the application process.

17 Everyone knew that it would be essentially a blind
18 point score, and those who scored the highest would get the
19 highest number of licenses. We could have argued at that time
20 if that was the fair thing to do or a way to maximize the
21 distribution of licensees, but that's not what happened.
22 Everyone, the State, the public, and the industry itself was
23 aware of how these licenses would be allocated, and I don't
24 recall any significant debate about that leading up to the
25 application process itself.

1 Q One of the issues specifically talked about quite a
2 bit here is the diversity component of the scoring. Were you
3 aware the diversity to be one of the issues that were -- one
4 of the items that was part of the grading process?

5 A Yes.

6 Q All right. Did anyone at those public hearings
7 otherwise object to diversity being part of the process?

8 A There was some discussion about diversity.
9 Diversity was not a requirement in the original medical
10 program. And several legislators in the state wanted to
11 include diversity going forward, and so I believe that was
12 added to the medical program as a criteria for the allocation
13 of future applications under the medical program. And so,
14 yes, there was some discussion during -- that would have been
15 the 2015 I believe legislative session about diversity and
16 maybe even the '17, as well.

17 But I don't recall any significant debate in the
18 promulgation of the regulations about diversity with the
19 industry, and I don't recall any significant debate, at all
20 really, when the application itself came out. No one stood
21 up, as far as I can recall, and said, hey, this is a problem
22 or this scoring rubric is messed up or I have an issue with
23 this. I just don't remember any of that.

24 Q One of the other criticisms that's been levied, is
25 it certain of the criteria on that directly demonstratively

1 related to the operation of the marijuana establishment. Did
2 anyone object that a certain criteria was listed was not
3 directly and demonstratively related to the operation of the
4 marijuana establishment?

5 A Well, I think it was clear that the State was
6 looking for people who had experience running a marijuana
7 establishment. In fact, the only people who could apply for
8 the recreational licenses were people who had already had a
9 medical license. And so it was clearly understood in my
10 opinion that the State was looking for experienced operators.
11 But I do not recall anyone standing up and saying that -- or
12 complaining that the application did not specifically call for
13 experience, I mean I think it was understood. I know in our
14 case we made every effort to leverage and to taunt and to, you
15 know, use our significant experience as an operator here in
16 the state throughout all aspects of the application.

17 Q All right. You said, "taunt." Did you mean to say
18 taut?

19 A Taut. Thank you very much.

20 Q Okay. If there's any taunting going on I was --

21 THE COURT: I was wondering, the way they were
22 talking it's like a sports game.

23 THE WITNESS: Maybe that's some foreshadowing of the
24 next people who are going to ask me questions. No, I'm just
25 kidding. Yeah, thank you for correcting that.

1 BY MR. KOCH:

2 Q All right. Let's just talk for a moment about what
3 happens if an injunction were granted here. What's your
4 understanding as far as NOR's obligation to open an
5 establishment with its conditional license?

6 A So we applied for eight licenses and we were awarded
7 seven. Part of the requirement is that we have one year from
8 the time the licenses were -- the provisional licenses were
9 awarded to get open. And so we're halfway through that right
10 now, right. And I think the plaintiffs in this case know
11 that, and I think their tactics to delay and --

12 MR. CRISTALLI: Objection.

13 THE COURT: Overruled.

14 THE WITNESS: -- stall that are apparent. So we are
15 under a tight time frame to get these new locations open. And
16 so we would absolutely incur a tremendous amount of harm if we
17 are further delayed in getting them open. And unfortunately,
18 local jurisdictions throughout the state are looking at this
19 case, and they are -- they have decided to delay processing
20 zoning applications and other necessary steps to get these
21 facilities open because of the wild speculation that has been
22 spread through these proceedings and the people involved.

23 BY MR. KOCH:

24 Q There's let's say an exception or maybe a carve-out
25 within that time period and the problems promulgated saying if

1 there are extenuating circumstances that time period may be
2 extended. Have you had any discussions with the Department or
3 anyone else about extending that period for extenuating
4 circumstances?

5 A I haven't personally had any discussions with the
6 Department about that issue. My hope is that they consider
7 this case and what the local municipalities have done in
8 extenuating circumstance, but to date there's nothing that I'm
9 aware of that's in writing guaranteeing that. So as far as I
10 am concerned, in the way that we're running our business,
11 we're not taking anything for granted. We're assuming that
12 the State's deadline still stands.

13 Q What needs to happen between now and December 4th,
14 2019, in order to get a final approval and inspection to be
15 able to open those establishments?

16 A Well, you would have to secure a location that met
17 all of the separation requirements that were discussed
18 previously. You'd have to go through local zoning approval.
19 You'd have to get a local business license. You's have to get
20 the facility built out and inspected by the Department in
21 order to begin operations.

22 Q So within the next six months you'd have to do all
23 of those things?

24 A Correct.

25 MR. KOCH: No further questions.

1 THE COURT: So, sir, before I turn you over to the
2 plaintiffs, the transaction between you and your original
3 founding parties with GGB Nevada, was that an all-cash
4 transaction?

5 THE WITNESS: No.

6 THE COURT: How much stock did you get as a result
7 of that transaction?

8 THE WITNESS: The transaction was 95 percent cash
9 and 5 percent stock.

10 THE COURT: So how many shares, or if it's easier,
11 what percentage of shares do you own in Xanthic Biopharma?

12 THE WITNESS: The short answer is I don't know. The
13 more lengthy explanation is that I'm a significant shareholder
14 of Xanthic/GGB. They changed their name from Xanthic to GGB,
15 Green Growth Brands. So I may refer to those interchangeably.
16 We are in the process of selling our Henderson license to the
17 same entity, and that's set to close at the end of this month.
18 When that closes I know that I will be one of the largest
19 shareholders in the company.

20 THE COURT: And when you say significant, and I'm
21 not talking about the future closing, only the one right now,
22 what is your percentage of the publicly traded entity?

23 THE WITNESS: I would guess around 1 percent, but I
24 could be off a little bit on that.

25 THE COURT: So you think you only own 1 percent of

1 the publicly traded entity?

2 THE WITNESS: Uh-huh.

3 THE COURT: Who owns the majority interest of that?

4 THE WITNESS: Who does?

5 THE COURT: Yep.

6 THE WITNESS: The largest shareholder I believe is
7 the Schottenstein family.

8 THE COURT: And how much do they own percentage
9 wise?

10 THE WITNESS: I believe it's around 30 percent.

11 THE COURT: Okay. Thank you.

12 THE WITNESS: You're welcome.

13 THE COURT: We have about 15 minutes, Mr. Kemp. If
14 you'd like to start.

15 MR. KEMP: We might as well get started, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. KEMP:

18 Q Good morning, Mr. Jolley.

19 A Good morning.

20 Q Now when I say NOR, will you understand that to be
21 Nevada Organic Remedies?

22 A Yes.

23 Q And rather than say HOR for Henderson Organic
24 Remedies, I think I'll just say it out in full, okay?

25 A I know where you're going with that, and that's --

1 Q Yeah, you've had that problem before?

2 A That's fine with me, although I've used both --

3 Q Okay.

4 A -- terms.

5 Q Now basically Nevada Organic Remedies got an 8 for
6 its diverse grading; right?

7 A As far as I recall.

8 Q Eight out of 20, which means in the eyes of the
9 graders you were 40 percent diverse?

10 A I'm not sure I can answer that.

11 Q Okay. And as the Judge mentioned, Xanthic's, a big
12 public Canadian public company?

13 A I don't know what you mean by big.

14 Q Well, it's over a billion-dollar company; right?

15 A I'm not sure if that's true.

16 Q Okay. Does it strike you as odd that a billion-
17 dollar Canadian public company wind up with an 8 or 40 percent
18 diversity rating?

19 A Well, A, you're using the word "big" again, and I
20 don't know what that really means. I don't think they're a
21 billion-dollar company. And, B, no, I don't personally find
22 that odd.

23 Q You don't find that offensive that a big Canadian
24 public company got a relatively high diversity rating of 8?

25 MR. KOCH: Objection. Argumentative.

1 THE COURT: Overruled.

2 THE WITNESS: Offensive?

3 BY MR. KEMP:

4 Q Yeah, offensive to minorities and women. You don't
5 find that offensive?

6 A We put together a very compelling application, and
7 I'm proud of the score that we received. We put -- with
8 respect to diversity, we were as accurate and thorough and
9 complete as possible in our application, and we didn't know --

10 Q If you were so --

11 THE COURT: Wait. You've got to let him finish, Mr.
12 Kemp.

13 BY MR. KEMP:

14 Q Go ahead.

15 A We did not know precisely that would be scored. We
16 didn't know the rubric, we didn't know exactly -- so how it
17 would turn out, we just put down on paper, you know, our best
18 effort that accurately represented the owners, board members,
19 and officers of the company, and that's where it shook out.

20 Q Well, actually what you did is you put the director
21 of human resources on your application as an owner, officer,
22 and board member; didn't you, a woman?

23 A Nope. I don't think that's correct.

24 Q Okay. Are you aware that she was rated for
25 diversity, she was part of your diversity rating? Are you

1 aware of that?

2 A Who are you talking about?

3 Q Okay. Why don't we get to it, and I'll show you
4 your exact diversity rating and what people were included and
5 not included, okay? And you tell me if you think someone
6 shouldn't have been included or if someone should have been
7 included, all right? First though, would you agree with me in
8 general that NOR's an LLC; right?

9 A That's correct.

10 Q Would you agree with me in general that the DOT
11 should have treated all the LLC applicants the same with
12 regards to how they graded diversity?

13 MR. KOCH: Objection. Legal conclusion,
14 speculation.

15 THE COURT: Overruled.

16 THE WITNESS: You're asking me to speculate on how
17 the Department graded applications, and I'm not --

18 BY MR. KEMP:

19 Q I'm not asking you how they graded --

20 A -- in a position to do that.

21 Q -- it.

22 THE COURT: Wait.

23 THE WITNESS: I'm still answering your question.

24 THE COURT: Guys, one at a time. Mr. Kemp, you've
25 got to let him finish.

1 MR. KEMP: Okay.

2 THE COURT: Sir, could you finish your answer. The
3 question was, should they have treated all LLCs the same?

4 THE WITNESS: You're asking me a technical question
5 about how the Department graded applications, and I don't
6 think I'm in a position to do that.

7 BY MR. KEMP

8 Q So you think it would be fair that they would give
9 you some special treatment that they didn't give to other
10 applicants, that's what you think --

11 MR. KOCH: Objection. Lacks --

12 THE COURT: Overruled.

13 THE WITNESS: Special treatment.

14 BY MR. KEMP:

15 Q Right.

16 A I don't know where that is coming from, but I don't
17 believe that we were deserving of any special treatment. I
18 believe that we put our best foot forward following the
19 guidelines of the application. We put together a thorough,
20 honest, complete and accurate application and we got the score
21 that we got.

22 Q Well, it's not fair to grade one LLC one way and
23 grade another LLC that's similarly situated another way;
24 right? That wouldn't be fair; would it?

25 A You are asking me to speculate about other

1 applications that I have no knowledge of. That's a ridiculous
2 question --

3 Q Oh, I'm going to show you some, sir.

4 A I'm still answering your question. I think it's
5 ridiculous for you to ask me a hypothetical to compare our
6 application with others when I haven't reviewed anyone else's
7 application.

8 Q I'm asking you --

9 A Nor was I in the position to be the one grading
10 those applications.

11 Q I'm asking --

12 A We put forth our most accurate, complete application
13 and we got the score that we got.

14 Q Did you expect that the Department of Transportation
15 would --

16 THE COURT: Taxation.

17 BY MR. KEMP:

18 Q Taxation would grade LLCs in the same fashion with
19 regards to diversity as opposed to grading some one way and
20 some the other way. Did you expect that?

21 MR. KOCH: Objection. Speculation.

22 THE COURT: Overruled.

23 THE WITNESS: The Department put forth an
24 application with a scoring rubric with certain requirements,
25 and it was my expectation that the Department would grade

1 those fairly across the board. And not only that, but a large
2 portion of the application itself was non-identified. So to
3 me that signified the Department's commitment to grading and
4 scoring these applications in an unbiased fair manner. And I
5 now know that they hired independent consultants to help do
6 that, to minimize the impact of having the regulators who
7 oversee the program, who have interaction with the applicants,
8 to minimize any potential bias there.

9 So from what I could tell, the Department absolutely
10 intended to be impartial in their evaluation of these
11 applications, and from where I sit today it seems like they
12 did a reasonable job of doing that.

13 THE COURT: Sir, can I ask the question slightly
14 different. Did you expect that they would apply consistent
15 standards in their grading to all LLCs?

16 THE WITNESS: Yes.

17 THE COURT: Okay. Thank you.

18 THE WITNESS: You're welcome.

19 BY MR. KEMP:

20 Q And that includes LLCs that were owned by public
21 companies. You expected them to provide the same standards?

22 A I guess I can repeat myself over and over and over
23 again, but I just --

24 Q Why don't you repeat the answer you gave to the
25 Judge, the yes or no answer.

1 A I'm going to give the answer that I am comfortable
2 with.

3 Q Well, no, you're actually required --

4 THE COURT: Mr. Kemp. Mr. Kemp, let him finish. I
5 want to give everybody in this courtroom as much time as they
6 need, under reasonable circumstances, to answer the questions.
7 And if it's not yes or no and he needs to explain, that's
8 great, we'll sit here and wait.

9 MR. KEMP: I'm fine with that, Your Honor.

10 THE COURT: But I just want one person talking at a
11 time, so later my record's going to be okay for whoever's
12 going to review this.

13 MR. KEMP: Okay. I'm not taking responsibility
14 though if he goes longer than today.

15 THE COURT: I know. I understand.

16 MR. KEMP: Okay.

17 THE COURT: Okay.

18 BY MR. KEMP:

19 Q Go ahead. The question was whether or not you
20 expected the Department to grade diversity the same for LLCs
21 with parent corporations? Yes, you did, no, you didn't, or
22 you can give your explanation or both. Go ahead.

23 A I expected the Department to be impartial and fair
24 for all applicants.

25 Q So that's a yes answer to my question?

1 A Would you like me to repeat what I just said?

2 Q No. I'd like you to tell me if that's a yes answer
3 to my question.

4 A You keep, you know --

5 Q I keep asking --

6 A -- asking questions in such a way that is forcing me
7 to agree with what you -- with the conclusion you'd like me to
8 come to, but I'm expressing my answer in a way that I'm
9 comfortable with.

10 Q That's what I'm supposed to do, Mr. Jolley. I'm
11 supposed to ask the question that way.

12 A Fair enough.

13 Q Okay.

14 A Well, good luck with that.

15 Q Let's try one more time. Would you agree with me
16 that you expected that the Department would grade LLCs equally
17 on the diversity portion with regards to public ownership?

18 A I expected the Department to evaluate all applicants
19 equally and with the same standards and rules.

20 Q Okay. Let me give you a hypothetical. Let's assume
21 that a company known as GreenMart, NLB LLC, was owned by CSX
22 and CSX was owned by a Canadian public company known as MPX.
23 You've heard of MPX; right?

24 A Yes.

25 Q Big player in the cannabis industry?

1 A You like using the word "big." I don't know what
2 you mean by that.

3 Q They have a lot of assets.

4 A What do you mean by a lot? I don't know, it's all
5 relative.

6 Q They're worth over \$200 million.

7 A I don't know.

8 Q Okay. All right. Would you agree with me that the
9 Department should have used the same approach to grading
10 diversity given that MPX was an owner of GreenMart LLC as they
11 did for NOR and Xanthic, should have done the same approach?

12 A I'm not familiar with their application. I'm not
13 familiar with their corporate structure, but I would expect
14 the Department to apply the rules consistently among
15 applicants.

16 Q Okay. And let me show you who GreenMart put in as
17 owners, officers, and directors.

18 MR. KEMP: Can I have my first slide, Shane.

19 BY MR. KEMP:

20 Q We've seen this before. I don't know if you've seen
21 it before, but they put in Elizabeth Stavola. You know her;
22 right?

23 A Yes.

24 Q She's a pretty, I won't use the word big,
25 significant player in the cannabis industry?

1 A I would say that.

2 Q Okay. And the gentleman under her, that's Mr.
3 Boyes?

4 A Is that a question?

5 Q Do you see Mr. Boyes there?

6 A Yes.

7 Q Again, he's also a significant player in the
8 cannabis industry?

9 A I'm not as familiar with Mr. Boyes.

10 Q Okay. So GreenMart and then these other eight
11 people, these are an advisory board that the LLC formed. We
12 had had one of them testify. I just want you to assume that
13 it's an advisory board, okay, of the LLC. Assuming for the
14 sake of argument that the Department graded just these people
15 for diversity for GreenMart and did not grade the owners,
16 officers, and board members of MPX, they would have been doing
17 something different than what was done in your case; right?

18 MR. KOCH: Objection. Speculation.

19 THE COURT: Overruled.

20 THE WITNESS: I'm not sure.

21 BY MR. KEMP:

22 Q Okay. Well, you would agree me that it should be
23 the same one way or the other, either they should grade all
24 the parent companies, officers, directors, and owners for
25 diversity for all applicants or they should not do it for all

1 applicants. Should be the same one way or the other; right?

2 A Again, you're asking me to comment on --

3 Q I'm asking you to -- go ahead.

4 A -- comment on the content of one's application. You
5 could have similar corporate structures among applicants, but
6 if you, you know, one applicant may present the information
7 differently, and so I can't speculate on what they did on
8 their application. I don't know. All I can say, like I said
9 many times already, is that I would expect the Department to
10 be fair in how it applies its rules.

11 Q Okay. So if GreenMart was owned by MPX, to do it
12 the same way you did it the applicants should have disclosed
13 the officers and directors of the public company, to do it the
14 way you did it?

15 A I think every applicant should be thorough and
16 accurate in its disclosures in its application.

17 Q Okay. And by that you mean that GreenMart should
18 have disclosed the owners and directors of the public
19 corporation, like you did, in their application. That should
20 have been done; right?

21 A I think each applicant had the responsibility to
22 provide thorough and accurate information on their
23 application.

24 Q Well, why did you include --

25 THE COURT: Mr. Graf, did you have an objection or

1 are you hanging out to kibitz?

2 MR. GRAF: Your Honor, I do have an objection. I
3 object to the silhouette of Shelby Brown as being the way that
4 it's indicated. That is a man. It's clearly not indicated as
5 a man, and I find it offensive.

6 THE COURT: Okay.

7 MR. GRAF: And I want to make sure the record's
8 clear that I objected to it.

9 THE COURT: And that was to the demonstrative slide
10 that --

11 MR. GRAF: Yep.

12 THE COURT: -- is on the viewer. Okay.

13 MR. GRAF: Thank you, Your Honor.

14 THE COURT: All right. You can continue. But we're
15 going to break after this next answer.

16 BY MR. KEMP:

17 Q Okay. Back to the question. The reason that you
18 included the officers and directors of the public company
19 Xanthic, that owned NOR, is because you understood that was
20 required; correct?

21 A We made every effort to be honest and accurate and
22 complete in our application.

23 Q You thought it was required in the application;
24 right?

25 A We made every effort to be thorough and accurate and

1 complete in our application and follow the rules in the
2 application.

3 THE COURT: All right. So we're going to take our
4 break now for lunch. This is not a requested recess.

5 MR. KEMP: Thank you, Your Honor.

6 THE COURT: So my question is do you need the
7 morning of June 12th. Yes, no, maybe?

8 MR. GENTILE: Your Honor, I'm in the Supreme Court
9 that morning.

10 THE COURT: Okay. So I will not book you the
11 morning of June 12th. I have currently reserved June 18th
12 through 20th. Assume with me for a minute that we have two
13 days this week, three days next week, is that enough?

14 MR. KOCH: Better be. Hope so.

15 MR. SCHEVORSKI: It's fine as far as the State's
16 concerned, Your Honor.

17 THE COURT: I have frequently told witnesses that
18 when they give answers that aren't yes and no sometimes it
19 takes longer and they miss flights. So if we have a situation
20 where that happens with this witness, what's the plan?

21 MR. GENTILE: I'll have to look at the flight
22 schedule.

23 MR. KOCH: Well, we'll continue these. He's doing
24 -- you know, he's doing a great job, so I want let him make
25 sure he testifies fully and accurately and truthfully.

1 THE COURT: No, no. I appreciate that. It's just
2 if I get to 4:45 and we're not done. I've got a problem.

3 MR. KOCH: I understand.

4 THE COURT: Okay.

5 MR. KOCH: I'll talk to Mr. Jolley about that --

6 THE COURT: It's not a requested break. You can
7 talk to him about that.

8 MR. KOCH: Yeah.

9 THE COURT: Any other stuff before I have a
10 conference call at 1:00 o'clock with somebody who wants me to
11 find time to finish their trial that didn't finish last -- was
12 it Thursday -- Thursday, Thursday morning.

13 MR. CRISTALLI: Your Honor --

14 THE COURT: Mr. Cristalli.

15 MR. CRISTALLI: Thank you, Your Honor. I believe
16 there is a motion scheduled for Wednesday --

17 THE COURT: There is.

18 MR. CRISTALLI: Yes. So that is -- Your Honor,
19 we'll hear that motion on Wednesday?

20 THE COURT: That was the plan.

21 MR. CRISTALLI: Okay. Wanted to make sure.

22 THE COURT: If you wanted me to, you know, hear it
23 another time, I will. I don't usually set those kind of
24 motions on short time, but --

25 MR. PARKER: Can we hear it on the 17th? I have to

1 fly out on Wednesday morning. I can take my by phone.

2 THE COURT: Do you all want to move it to the 17th?
3 I'm okay with that.

4 MR. GUTIERREZ: It's our motion. I think we'd
5 rather keep it on Wednesday. We filed an order shortening
6 time. So if we could keep it Wednesday at 12:00, that's good
7 for us.

8 THE COURT: You want to move it to Tuesday afternoon
9 since you've --

10 MR. PARKER: Tomorrow afternoon would be great for
11 me.

12 THE COURT: Can we do it Tuesday afternoon?

13 MR. GUTIERREZ: I'm in another court tomorrow
14 afternoon, a settlement conference in front of Judge Weiss.

15 MR. KEMP: What about Thursday afternoon?

16 MR. GUTIERREZ: Thursday could work.

17 MR. KEMP: Is that good for you?

18 MR. PARKER: I can do it on the phone on Thursday.

19 THE COURT: Okay. So we'll move it to Thursday.
20 What time?

21 MR. GUTIERREZ: Whatever time works. I'm available
22 all day. 1:30?

23 MR. PARKER: No. Let's do it in the morning,
24 Your Honor. My flight coming back is in the afternoon, so
25 that's --

1 THE COURT: Can we do it Thursday morning at 11:30?
2 And if more than one person wants to attend --

3 MR. PARKER: Your Honor, 11:30 here is three hours
4 later. So can we it like 9:00 o'clock in the morning or 9:30
5 in the morning?

6 THE COURT: Hold on, Mr. Parker.

7 MR. PARKER: I'll be on Eastern Time next week.

8 THE COURT: Mr. Parker, you are a lot of work.

9 THE COURT: So you're going to South CARolina, huh?

10 MR. PARKER: I will be in South CARolina. I leave
11 on Wednesday morning.

12 THE COURT: Hold on a second. Let me look. I have
13 an 8:30 session that day, I have five things at 9:00 o'clock,
14 one of which is complicated. What time is your plane Eastern
15 Time?

16 MR. PARKER: It's normally an 11:20 flight. That's
17 the flight I intend to take coming back. So that's 8:20 your
18 time.

19 THE COURT: That's at 8:20 a.m. I'm not doing it at
20 8:20.

21 MR. PARKER: I know. But I land in Atlanta an hour
22 later. So typically I have about an hour-and-a-half window
23 there. That's the window I try and take advantage of.

24 THE COURT: And what time does your flight usually
25 leave Atlanta to come to Las Vegas?

1 MR. PARKER: Normally around 1:50, I believe.

2 THE COURT: Eastern Time. Which is 10:50, which
3 means if I try and do you on my 9:00 o'clock calendar I will
4 put you on hold and then when everybody's here and before you
5 have to board your next flight I will do your hearing.

6 MR. PARKER: Perfect.

7 THE COURT: Does that work?

8 MR. PARKER: That sounds great, Your Honor.

9 THE COURT: So for those of you listening at home,
10 that's 9:00 o'clock Thursday. The motion's that Wednesday is
11 being moved to 9:00 o'clock Thursday.

12 And if more than one person is appearing by phone,
13 Mr. Parker, you will have to set up a call-in number.

14 MR. PARKER: All right. No problem. Thank you,
15 Your Honor.

16 THE COURT: Anything else? See you guys at 1:15. I
17 do have a 1:00 o'clock conference call.

18 (Court recessed at 12:02 p.m., until 1:15 p.m.)

19 THE COURT: Are we all ready?

20 THE MARSHAL: Ready to go?

21 THE COURT: They're not all there.

22 (Pause in the proceedings)

23 THE COURT: Mr. Jolley, I'd like to remind you
24 you're still under oath. Okay. And as soon as we find the
25 rest of the lawyers, we'll start. I have a bad habit of

1 starting early and they haven't figured it out yet. Today I
2 was just on time, though.

3 (Pause in the proceedings)

4 THE COURT: Okay.

5 MR. KEMP: Okay.

6 THE COURT: We are now up to a quota, so you may
7 continue.

8 MR. KEMP: Okay.

9 CROSS-EXAMINATION (Continued)

10 BY MR. KEMP:

11 Q Mr. Jolley, I understand you have to be somewhere
12 tonight. Is that why we're trying to get you done?

13 A Yes.

14 Q Is it San Francisco you're going to?

15 A No.

16 Q Okay. All right, back to where we were and I think
17 we were at the GreenMart officers and directors. And my
18 question was if you did it one way, in other words, listing
19 the officers and directors of Xanthic and GreenMart did it
20 another way, not listing officers and directors their entity,
21 which would be MPX again, what was your expectation? Was it
22 your expectation that everyone would do it the same way?

23 A I can't speak to GreenMart, but what we did is we
24 thoroughly reviewed the application and tried to be as
25 responsive and thorough and accurate as we could be.

1 Q Well, did the DOT or the State give you any
2 instruction as to how public corporations that were applicants
3 or applicants that were owned by public corporations, did the
4 State give you any instruction as to what you were supposed to
5 do?

6 A For the most part I believe the application was
7 self-explanatory.

8 Q So you understood the application to instruct to
9 include officers and directors of parent corporations, is that
10 right?

11 A We disclosed everything we thought we should
12 disclose and we did disclose officers and board members.

13 Q So you thought you were required to disclose the
14 officers and directors of the parent; correct?

15 A Well, when it comes down to judgment calls, we erred
16 on the side of -- you know, more disclosure we thought was
17 appropriate.

18 Q Okay. So you think it would have been appropriate
19 for an applicant to disclose the officers and directors of a
20 parent?

21 A Again, you're asking me to kind of in a way tacitly,
22 you know, second-guess another person's application that I
23 have no knowledge of, but I believe each applicant has to use
24 their own discretion and judgment to decide what's appropriate
25 to disclose. We did the best we could.

1 Q Well, you don't think the diversity scoring should
2 have been up to different applicants' discretion; right?

3 A I think the rules should apply across the board,
4 even though no two companies are the same, have different
5 structures and things.

6 Q In the best of all worlds would you agree that the
7 DOT should have given clear instruction to all the applicants
8 that had any sort of involvement with a public company as to
9 how to do it?

10 A In my view the DOT did a reasonable job at putting
11 forth the rules of the application, posting the application
12 and providing an opportunity for people to ask questions.

13 Q But there were no instructions with regards to
14 public companies that were applicants or owned applicants;
15 correct?

16 A I don't know about that.

17 Q Do you know of any specific rules that were given
18 for applicants that were either owned by public companies or
19 public companies?

20 A The Department has had a precedent of handling
21 disclosure of owners, board members, officers of public
22 companies and we had insight into that, I would say, you know,
23 going into the application process. Not that we were unique.
24 I think, you know, anyone in the industry could have, you
25 know, had the same knowledge we had. You know, there's a

1 precedent for disclosing owners. As we talked about earlier
2 there's, you know, certain requirements regarding agent cards
3 and that kind of thing. So we, in a sense, you know, had some
4 background in that, but at the end of the day we all were
5 given the same application and did our best to adhere to the
6 rules and the requirements of the application.

7 Q Okay. Earlier I asked you whether it would be fair
8 for one applicant to do it one way and one applicant to do it
9 another way. I asked the same question of Mr. Gilbert and I
10 would like to show you what he said and see if you agree with
11 him. Take a look at your screen. Shane.

12 THE COURT: And is this a transcript from the day he
13 testified last week?

14 MR. KEMP: It's a transcript from Friday, Your
15 Honor, which the transcript lists 5/30 but it's really 5/31.

16 THE COURT: Thank you.

17 MR. KEMP: And these are pages 202, lines 10 through
18 18.

19 THE COURT: And that's already been filed with the
20 court --

21 MR. KEMP: Right.

22 THE COURT: -- by the court reporter, by Flo?

23 COURT RECORDER: I haven't filed them yet.

24 THE COURT: You haven't filed them yet? It will be
25 filed by the Court Recorder. Right?

1 COURT RECORDER: Yes, ma'am.

2 MR. KEMP: Okay.

3 BY MR. KEMP:

4 Q Okay. Do you see the question and answer of Mr.
5 Gilbert where I asked him if you have two different
6 applicants, one that listed the corporate parents one way and
7 one that did it the other and you would have had a different
8 outcome but that wouldn't be fair? He says -- "Doesn't sound
9 like it would be fair?" And he says, "Right." Do you see the
10 questions and --

11 A Yes, I see the screen.

12 Q Would you agree with Mr. Gilbert?

13 A It's not my job to analyze how the Department graded
14 the applications that they have the statutory authority to
15 grade. And I don't think your question here gives enough
16 context for anyone, including Mr. Gilbert, to provide a
17 thorough and fair answer. And so I will -- I'm not in a
18 position to speculate on that.

19 Q Okay. Now, if the State thinks that what they did
20 was unfair -- assume that for me -- what's the remedy here?
21 Should we do it over again?

22 MR. KOCH: Objection. Legal conclusion.
23 Argumentative.

24 THE COURT: Overruled.

25 THE WITNESS: Well, I don't think I would interpret

1 that response to that question the same way you just stated
2 it; first.

3 MR. KEMP: Okay.

4 THE WITNESS: Okay.

5 MR. KEMP: Fair. Or I understand; better word.

6 THE WITNESS: I'm glad you agree with me. Thank you.

7 MR. KEMP: I didn't say I agree, I said I understand.

8 THE WITNESS: But if you're asking if there is or
9 should be a flawless application process for a very complex
10 program, I mean, great, that would be wonderful if one could
11 invent that, but I don't think that's -- I don't think that's
12 feasible. I think the State did its best effort. It
13 certainly had the authority to run and administer the program
14 the way that they see fit. And so I just don't -- I don't
15 think it's a reasonable question. I think that they have done
16 a good job of running the program.

17 BY MR. KEMP:

18 Q Do you think it would have been complex -- your word
19 -- for the State to tell the applicants that they should list
20 the officers and directors of their parent companies one way
21 or the other way? Do you think that would have been a complex
22 thing?

23 A That's not what I said.

24 Q Well, what's your answer?

25 A I said running a program of this nature is

1 inherently complex.

2 BY MR. KEMP:

3 Q But telling an applicant how to list its publicly
4 traded company's officers and directors, that's not complex,
5 is it?

6 A I think the State should make an effort to be clear
7 with its rules.

8 Q And is it correct that the State didn't tell you
9 precisely how to list the officers and directors of the
10 parent?

11 A I don't think that's a fair statement.

12 Q They did tell you how to list the officers and
13 directors of the parent?

14 A You know, we didn't just make this up out of thin
15 air. I mean, we reviewed the application, we had a period of
16 time where we could have asked for clarification questions and
17 we did our best to be responsive to the sections of the
18 application.

19 Q Okay. Now, you're an LLC or at least NOR is an LLC;
20 right?

21 A Yes.

22 Q And you recognize there's a difference between LLCs
23 and corporations; corporations have boards of directors and
24 LLCs don't. Do you recognize that?

25 MR. KOCH: Objection. Lacks foundation.

1 Argumentative.

2 THE COURT: Overruled.

3 THE WITNESS: You know, I'm not a lawyer, but I do
4 recognize that there are differences between LLCs and
5 corporations.

6 BY MR. KEMP:

7 Q Now, what would be your position on whether it was
8 appropriate for an applicant to list someone -- an LLC
9 applicant to list someone on a so-called advisory board and
10 get diversity points for that?

11 MR. KOCH: Objection. Incomplete hypothetical.

12 THE COURT: Overruled.

13 THE WITNESS: Each applicant has to use their own
14 discretion and judgment to put forth an application that meets
15 the requirements. So I'm not sure that I'm, you know,
16 qualified or in a position to speculate about the importance
17 of an advisory board.

18 BY MR. KEMP:

19 Q Okay. So if 20 applicants put together an advisory
20 board and they use that as a mechanism to get, say, 20
21 diversity points and that was the difference in them winning
22 and you losing, do you think that would be appropriate?

23 MR. KOCH: Objection. Incomplete hypothetical.

24 THE COURT: Overruled. You can answer.

25 THE WITNESS: Again, this is a hypothetical

1 situation that I'm just not sure I'm in a position -- I mean,
2 maybe you could ask the Department that. I just don't know
3 really what I can say to shed light on that.

4 MR. KEMP: Well, I did ask the Department that.
5 Can I have my next in order, Shane.

6 THE COURT: And if you could give us the date of the
7 citation and the page numbers.

8 MR. KEMP: This is the same day, Your Honor. Mr.
9 Gilbert. Pages. 167, lines 1 through 4.

10 THE COURT: Thank you.

11 BY MR. KEMP:

12 Q Do you see the testimony there? "Question: They
13 should have put the officers and directors of MPX and the
14 officers and directors of CSX; right?" "Answer: Yes." Do
15 you see that statement?

16 A Yes.

17 Q Do you agree with that?

18 A Again, you're asking me to put myself in Mr.
19 Gilbert's position and opine on his response and I just don't
20 have -- I don't have a response for that.

21 BY MR. KEMP:

22 Q Okay. Well --

23 A We followed the application the best we could, given
24 the circumstances, and I think, you know, every applicant
25 should have done that and if there were areas of ambiguity

1 they could have and should have asked questions.

2 Q Okay. But assuming that NOR got the 8 diversity
3 grade -- that's what you got, right, 8?

4 A I believe so.

5 Q Assuming you got 8 doing it one way and GreenMart
6 got a 16 doing it the opposite way, not listing the officers
7 and directors of the parent, would you agree with me that
8 there should be some sort of procedures to insure that all the
9 LLCs with publicly traded parents were graded the same way?

10 A I think the State should make an effort to apply the
11 rules evenly across the board, but I can't comment on someone
12 else's application that I haven't reviewed and know nothing
13 about.

14 Q Okay. Fair. So the State should apply the rules
15 evenly across the board; right? That's what you just said.

16 A Yes. I believe the State should be fair.

17 Q Okay. And now that you've seen, at least in my
18 hypothetical, that the rules were not applied evenly to
19 GreenMart and you with regards to listing the parents and
20 officers -- excuse me, the officers and directors of the
21 parent for diversity purposes, now that you've seen that it
22 wasn't applied evenly, what should we do?

23 MR. KOCH: Objection. Legal conclusion.
24 Argumentative.

25 THE COURT: Sustained. Can you rephrase your

1 question?

2 BY MR. KEMP:

3 Q Can you see why applicants who didn't win solely
4 because of diversity points, can you see why they'd be upset
5 with this diversity procedure?

6 MR. KOCH: Objection. Speculation.

7 THE COURT: Overruled.

8 THE WITNESS: I don't have enough information to
9 opine on that.

10 BY MR. KEMP:

11 Q Well, let me give you a little more. If you took
12 diversity out of it altogether, M&M would have won in Clark
13 County, if you just took away all the diversity grades. Can
14 you see why M&M would have been upset?

15 A Are you saying that the applications should not have
16 included diversity?

17 Q Well, I'm going to get to that in a minute.

18 A I'm confused.

19 Q But can you see why an applicant, that if you did
20 not have any diversity points or if you did not score
21 diversity they may have been a winner? Can you see why they
22 would be upset?

23 A So if I could have rewritten the application to say
24 that if your initials are AMJ you get an extra 100 points,
25 yeah, we would have gotten first place instead of second.

1 You're asking me if I could rewrite the application in a way
2 that would benefit me or somebody else. I just don't know
3 that I have anything to offer on that.

4 Q So what MM Development should have done is they
5 should have gotten an advisory board and packed it full of
6 women and minorities and got 20 diversity points instead of 4,
7 then they would have been a winner. That's what they should
8 have done, is that what you're telling me?

9 MR. KOCH: Objection. Argumentative.

10 THE COURT: Overruled.

11 THE WITNESS: That's not what I'm saying. I'm
12 saying we all received the same application. We all had a
13 chance to ask questions to clarify.

14 MR. CRISTALLI: Objection. That misstates the
15 evidence.

16 THE COURT: Overruled.

17 BY MR. KEMP:

18 Q There were two applications; right?

19 A I wasn't finished.

20 Q Okay, go ahead.

21 A We had the ability to ask clarifying questions.
22 And at the end of the day I believe all applicants, who were
23 existing medical licensees, mind you, went into the
24 application process understanding full well that the
25 Department had statutory authority to collect, score

1 applications and ultimately award licenses. And so if one had
2 concerns about the application or the criteria that were in
3 the regulations, there were multiple points in time where they
4 could have asked for clarification, pointed out that it was
5 not done correctly, or as you say, come up with any myriad of
6 suggestions to make it more favorable for them. But that's
7 just not how the process, you know --

8 Q Prior to September 20th did you personally have any
9 concerns that an applicant, an LLC would create an advisory
10 board to try to get diversity points?

11 A I can't say that's a scenario that I spent a lot of
12 time considering.

13 Q And so if you didn't think about it, why do you
14 think the other applicants should have thought about it and
15 asked questions about it?

16 A I'm not saying that.

17 Q Okay. So this situation, and we'll call it the
18 GreenMart situation just for shorthand, this situation --

19 MS. SHELL: I'm going to object to characterizing it
20 as GreenMart situation, Your Honor.

21 THE COURT: Okay.

22 MR. KEMP: Okay. Let me try and rephrase it, Your
23 Honor.

24 THE COURT: It's overruled.

25 MR. KEMP: Oh, okay.

1 THE COURT: She won one last week, though, or the
2 week before.

3 MS. SHELL: Two, Your Honor. Two.

4 MR. KEMP: The day is not over, Your Honor.

5 THE COURT: I had the same objection from somebody
6 earlier. I don't remember who it was. Okay, so you got one.

7 BY MR. KEMP:

8 Q Referring to the GreenMart -- and what I refer to by
9 the GreenMart situation is we have the LLC with an advisory
10 board that doesn't list their officers and directors of their
11 parent, okay. So you would agree with me that no one -- no
12 one anticipated that. You didn't anticipate it?

13 A I would not agree with that.

14 Q You did anticipate that someone would try to list
15 advisory board members on an LLC to get more diversity points?
16 You did anticipate that?

17 A I cannot say that I spent a lot of time considering
18 that hypothetical situation.

19 Q Okay. No one considered that, right, no one that
20 you know of?

21 A You're asking me if I can identify individuals who
22 considered this particular hypothetical scenario?

23 Q Right.

24 A I don't even know how to answer your question, to be
25 honest. I'm sorry, I'm doing the best I can, but.

1 Q You can say no, you can't identify any individuals
2 or you can say yes, you can. There's easy answers here.

3 A All I can say is applicants had the opportunity to
4 ask questions about the application prior to submitting it.

5 Q Okay. Let's talk about the NOR ownership at the
6 time you filed your application. So the application was filed
7 sometime between September 10th and September 20th, I believe.

8 A That sounds correct. I don't remember the exact
9 dates.

10 Q If that's the filing period, do you know when in the
11 filing period you filed?

12 A It was not on the last day.

13 Q Okay.

14 A It was sometime before that.

15 MR. KEMP: Can I have Exhibit 93, please, and the
16 pop out, please.

17 BY MR. KEMP:

18 Q Now, according to this document, and this is from
19 Xanthic, I believe, it says the NOR acquisition was completed
20 on September 4th, 2018. Is that true?

21 A That's what this statement says.

22 Q I know that's what that statement says. I'm asking
23 is it true that's when the acquisition was completed?

24 A When it was ultimately consummated, I believe so,
25 going from memory. It had been in the works for months before

1 that.

2 Q So at the time you filed the application, it would
3 have been after the acquisition; right?

4 A That's correct.

5 Q Okay. And now as I understand it, 100 percent of
6 the membership interest in NOR was sold to GGB Nevada, LLC,
7 100 percent?

8 A At the time the application was submitted we had
9 transferred 95 percent of NOR to GGB Nevada.

10 MR. KEMP: Can I have my next one, Shane?

11 This is Exhibit 94, Your Honor. I'll submit it.

12 BY MR. KEMP:

13 Q "In September 2018, the members of the company sold
14 100 percent of the membership interest to GGB Nevada, LLC."
15 Did I read that right?

16 A I believe -- yes, you read that correctly.

17 Q And that's true; right?

18 A Now, I just said as of the time we submitted our
19 application we had sold 95 percent of NOR.

20 BY MR. KEMP: Shane, will you show him whose
21 financial statement that is on the top, please? At the very
22 top there. Yeah, that's good. Good. Pop that up.

23 BY MR. KEMP:

24 Q That's from Nevada Organic Remedies Consolidated
25 Financial Statements. That's what Exhibit 94 is. And that

1 statement says you sold 100 percent, not 95 percent. Okay,
2 Mr. Jolley? Is this some sort of mistake?

3 A I'm not -- I haven't reviewed this document, so I
4 don't really know.

5 Q You could be wrong. You could have sold 100 percent
6 in September 2018?

7 A I don't think so, no.

8 Q So you think you filed an erroneous financial
9 statement?

10 A I didn't file this financial statement.

11 Q Did you know that this was filed with the Canadian
12 Stock Exchange, this statement that I'm looking at right here
13 now, Exhibit 94?

14 A I know that Xanthic/GGB, I'll kind of use those
15 interchangeably, had certain filing requirements that it was
16 working on, but I was not aware of this statement in the
17 document.

18 Q Okay.

19 A If it is in fact the most accurate up-to-date
20 statement. I'm not sure.

21 Q Well, let's boil this down. Are you even sure as we
22 sit here today whether they sold 100 percent or 95 percent?

23 A Yes.

24 Q You are sure?

25 A Yes.

1 Q And what is the answer?

2 A 95 percent.

3 Q Okay. All right. In the application you listed

4 yourself and the Byrne brothers as owners of NOR; correct?

5 A They're not brothers.

6 Q They're just both named Byrne?

7 A Yep.

8 Q And it's spelled the same way, B-y-r-n-e?

9 A Strange, right? Yes, that's correct.

10 Q It does sound strange. Okay. All right. But in

11 any event, you list two people named Byrne and yourself as

12 owners; right?

13 A And Liesl Sicz through her entity and Darren

14 Petersen. Yes.

15 Q Liesl Sicz. Okay. If I'm right, she wasn't

16 actually an owner of NOR, was she?

17 A Well, she was the member of an LLC that was an owner

18 of NOR.

19 Q And that would be the Harvest LLC?

20 A That's correct.

21 Q So you listed her as an owner of NOR, even though

22 she was actually an owner of Harvest; right?

23 A Well, in my mind it's kind of the same thing. I

24 mean --

25 Q Same thing?

1 A I'm still answering your question. So the Harvest
2 entity owned 10 percent of NOR and Liesl was the member of
3 that entity, as far as I can recall.

4 Q Now, let's assume that this transaction had not
5 occurred, okay, and by that I mean the sale to GGB and the
6 involvement of Xanthic. Let's assume that hadn't occurred.
7 Would I be correct that then in that case you and the two
8 Byrnes would both be the only people listed as owners?

9 A No.

10 Q Who else is involved?

11 A The Harvest entity, whose member is Liesl Sicz, and
12 Darren Petersen were also owners of NOR.

13 Q Darren Petersen is a white male?

14 A Yes, I believe so.

15 Q So assuming for the sake of argument that the
16 Harvest LLC would have been given points for being owned by a
17 woman, even though an LLC isn't actually gender specific,
18 assuming that you would have had one out of five diverse in
19 that scenario?

20 MR. KOCH: Objection, lacks foundation.

21 THE COURT: Overruled.

22 THE WITNESS: If you are speaking strictly of the
23 members of the NOR LLC --

24 MR. KEMP: Right.

25 THE WITNESS: -- then yeah.

1 BY MR. KEMP:

2 Q And one out of five, that would have given you 4
3 diversity points, not the 8 you got?

4 A I'm actually not sure how the State scored that
5 section.

6 Q Well, assuming that they did division where they
7 took the diverse person and they divided into the number of
8 people that were owners, officers and directors, that would be
9 20 percent. You don't know as you sit here today that that
10 qualifies as a 4?

11 A Well, you're making certain assumptions about how
12 the State scored the diversity section and you're focusing
13 only on owners. And I honestly don't know to what degree they
14 took into consideration, you know, directors and others
15 involved in the company.

16 Q Okay. But as an LLC, NOR wouldn't have any
17 directors. We've already been through that. Right?

18 A We don't have an official board of directors as an
19 LLC, but we do have directors who run and operate the company,
20 are key executives within the company.

21 Q Okay. Well, I'm glad you brought that up. You
22 don't have an official board for NOR, but you have people that
23 you call internally directors; right?

24 A We do not have an official board of directors, if
25 that's your question.

1 Q And so, for example, you have a Director of Human
2 Resources; right?

3 A That's a title within our company, yes.

4 Q And you also have a Director of Marketing?

5 A Yes.

6 Q And a Director of Purchasing?

7 A Yes.

8 Q And the Human Resources director, that's a woman?

9 A Yes.

10 Q And the Marketing director is also a woman?

11 A No.

12 Q Oh, okay. What about Purchasing?

13 A Courtney Barker is a woman, yes.

14 Q Okay. And isn't it true that even though they were
15 not officially on the board of directors of NOR, that you
16 listed your Director of Human Resources and your Director of
17 Purchasing as directors in the owner/officer/director section?

18 A I interpreted the application --

19 THE COURT: Sir, that was a yes or no.

20 THE WITNESS: Yeah, I'm uncomfortable with the way
21 that the question was phrased.

22 BY MR. KEMP:

23 Q Can you answer yes or no and then I will allow you
24 to expand?

25 A Sure. Can you please restate the question?

1 Q Isn't it true that in the owners, officers and
2 directors section of the application you listed the Director
3 of Human Resources and the Director of Marketing as directors,
4 even though they weren't officially on the board of directors
5 of NOR?

6 A Well, there is no board of directors, so.

7 Q You've already said that.

8 A Yeah.

9 Q So you listed them because you called them a
10 director, even though they weren't on the board of directors
11 of the LLC; correct?

12 A Well, it's their title. It's their official title.

13 THE COURT: So, sir, did you list them as directors
14 under the definition of board of directors on the application?

15 THE WITNESS: We didn't call them board of directors.
16 We were --

17 BY MR. KEMP:

18 Q You called them directors?

19 A Yeah. We called them -- yeah, that's their title in
20 the company. So we're trying to describe to the State an
21 accurate and complete picture of who runs the company and who
22 the individuals are actually making decisions and managing
23 people and so forth.

24 Q And so it was your understanding that on this
25 application even if you just called them director -- if you

1 called everyone -- how many employees does NOR have, 200?

2 A Two hundred and fifty something.

3 Q If you called all 250 people directors, okay, it was
4 your understanding that you could list them on the application
5 under the director -- owners, officers and directors section.
6 That's what you're telling me?

7 A No, that wasn't what we did. I interpreted the
8 application to be asking who runs the company, who are the
9 executives that make decisions to operate the company, and we
10 felt that those high-level executives that run the
11 organization would be pertinent to disclose on the
12 application.

13 Q So you interpreted the requirement in the
14 application to list owners, officers and directors to really
15 mean owners, officers, directors and high-level executives.
16 That's what you did?

17 A I'm not sure I would agree with that specifically
18 because if you look at Xanthic, for example, we listed their
19 officers and board members. And when it came to NOR we listed
20 the people that we felt were crucial to running the company.

21 Q Well, you didn't list the Director of Human
22 Resources of Xanthic, did you?

23 A I'm not familiar with if they even have a director
24 of human resources.

25 Q But you did list the Director of Human Resources and

1 Director of Marketing of NOR, two women; right?

2 A We have an executive team at NOR and we listed all
3 the people who are part of that executive team.

4 Q Including these --

5 A These are the people who actually run the company.

6 Q Including these two women who are not officially on
7 the board of directors of NOR, you listed them; right?

8 A We listed all the key executives that compose the
9 executive team who come into the office every day and run the
10 company.

11 Q Including the two women; right?

12 A Including everyone who's a key executive in the
13 company.

14 Q Okay. Would I be correct that the application
15 required you to list the percentage of ownership of all the
16 owners?

17 A I think --

18 Q Do you want to look at it?

19 A Well, I think where that statement gets murky is
20 when you talk about publicly traded companies.

21 Q Okay. That's where we're going to go in a minute,
22 but would you agree with me that the application requires,
23 quote, "all owners and their percentage of ownership" to be
24 listed?

25 MR. KOCH: Objection. He's pointing to a section of

1 the document. I'd ask him to show it.

2 THE COURT: Overruled.

3 BY MR. KEMP:

4 Q Do you know as you sit here -- I'll show it to you
5 if you want.

6 A Yeah, please.

7 MR. KEMP: Shane, will you pop it up, please?

8 I.T. TECHNICIAN: Sorry, which exhibit?

9 MR. KEMP: It's Exhibit 5, page 11.

10 BY MR. KEMP:

11 Q "And the organizational chart showing all owners,
12 officers and board members of the recreational marijuana
13 establishment, including percentage of ownership of each
14 individual -- for each individual." Right, that's what it
15 says?

16 A Yes.

17 Q Now, counsel asked you some questions about -- I
18 can't remember who it was, someone you listed on the
19 percentage of ownership. It's true that you did not list all
20 of the owners of Xanthic; right?

21 A Xanthic is a publicly traded corporation and our
22 understanding was that for a publicly registered or publicly
23 traded companies that you're required to disclose the officers
24 and board members, which we did.

25 Q Where did you get that understanding?

1 A Well, I've been involved in the industry from the
2 beginning and our legal counsel has been and we had just
3 recently received an approval letter from the Department of
4 Taxation itself approving the 95 percent transfer of
5 ownership.

6 Q Okay.

7 A I'm still going. So I --

8 Q So it was your --

9 A So we did a similar disclosure in our application,
10 listing those same board members and officers. At no point in
11 time was there a requirement to list every shareholder of
12 Xanthic.

13 Q But it was your understanding that you had to list
14 all of the officers and directors of the public company but
15 not the shareholders, is that correct?

16 A That's correct. My understanding was that we had to
17 list the board members and officers in the application, just
18 as we had recently done in the ownership transfer request that
19 we submitted to the State which was recently approved.

20 Q Okay. And you did not include the major
21 shareholders of Xanthic; correct?

22 A I don't agree with that statement.

23 Q Okay. All Js Greenspace LLC, have you ever heard
24 that name?

25 A All Jay Green Piece?

1 Q All Js Greenspace LLC.

2 A Not off the top of my head.

3 Q And if I told you they owned 37 million shares of
4 Xanthic, they are 22.5 percent, that's news to you now?

5 A Can you tell me who the members and managers are of
6 that LLC?

7 Q Earlier you referenced an individual named Schott
8 something?

9 A Schottenstein.

10 Q Yes. So the Schottenstein company is one of the
11 major owners?

12 A As far as I know, yes.

13 Q And do you know how much they own?

14 A My recollection was around 30 percent.

15 Q Okay. And how about GA Opportunities Corp? They
16 own 27 million shares of Xanthic or 16.5 percent of the
17 company. You didn't list them under the organizational chart,
18 did you?

19 A I believe we listed everyone that the application
20 required us to list.

21 Q Okay. I'm not asking if you think you did
22 everything right, I'm asking specifically did you list GA
23 Opportunities Corp. or not?

24 A GA Opportunities Corp. is not on our application, as
25 far as I can recall.

1 Q And neither was All Js, which by the way is a
2 wonderful name for a marijuana company, All Js Greenspace LLC;
3 right?

4 A I do not believe we listed All Js.

5 Q But you did list Liesl -- how do you pronounce her
6 last name?

7 A Liesl Sicz.

8 Q And she only owned .5 percent of NOR through
9 Harvest; right?

10 A Yeah, post 95 percent transaction. I'd have to pull
11 that up again and see, but yeah, it was a smaller percentage.

12 Q Okay. Let's use your 95 percent. So if you use
13 your 95 percent, these two shareholders that own 37 percent of
14 NOR you didn't list, but the woman who only owned, what was
15 it, .5 percent, you did list as an owner; right? Right?

16 A Well, you know --

17 Q I'm just asking what you did.

18 A Yeah. So I don't believe we listed those two
19 entities, you know. You're asking me to make certain
20 assumptions that I frankly don't know as I sit here right now,
21 but I know we did list Liesl Sicz, yes.

22 Q Okay. So why did you list the woman that only owned
23 .5 percent and you didn't list the shareholders that owned 74
24 times as much stock? Why was that?

25 A Well, first of all, Liesl was one of the founding

1 owners. She was integral in the establishment, the set-up
2 operations of the company. Very involved. And number two, I
3 understood the rules at the time did not require us to list
4 every shareholder for a publicly traded company. I thought we
5 were required to disclose board members and officers and
6 directors, which we did.

7 Q And number three, she was a woman?

8 A Liesl Sicz is in fact a woman, yes.

9 Q So by listing her you got diversity points, whereas
10 the other two you would have lost diversity points if you
11 listed them?

12 A We listed Liesl because it was accurate, not because
13 she was a woman. She was a founder of the company.

14 Q Okay. All right.

15 MR. KEMP: Shane, can I have the slide for Exhibit
16 127. Did we admit that?

17 THE CLERK: It's proposed.

18 MR. KEMP: Your Honor, I'd move to admit 127, which
19 is --

20 THE COURT: Any objection to 127?

21 MR. KEMP: That's the NOR application.

22 MR. KOCH: Which part of it?

23 MR. KEMP: Pages 12 and 13, the diversity portion.

24 MR. KOCH: Is this the one that we submitted with
25 redacted?

1 MR. KEMP: Yeah.

2 MR. KOCH: Okay. That's fine.

3 THE COURT: And it's a two-page document?

4 MR. KEMP: It's more than that.

5 THE COURT: Or am I only admitting two pages?

6 MR. KEMP: I'm just using the two pages.

7 THE COURT: So we're going to admit pages 12 and 13
8 of 127.

9 (Plaintiffs' Exhibit 127, pages 12 and 13, admitted)

10 BY MR. KEMP:

11 Q Okay. Sir, do you recognize this as Attachment A
12 from the NOR application for the marijuana -- recreational
13 marijuana license?

14 A Yes.

15 Q Okay. And the first person there, that's named who?

16 A Courtney Barker.

17 Q Okay. And you list her as an officer of NOR; right?

18 A Correct.

19 Q But she really wasn't an officer, was she?

20 A She runs -- she's one of the most influential
21 executives in the company, so I would call her an officer.

22 Q Okay. You would call her an officer, but she's not
23 recognized as an officer by the Nevada Secretary of State, is
24 she?

25 A For NOR LLC?

1 Q Right.

2 A I don't believe so, no.

3 Q So you listed what you think are highly influential
4 or key employees as officers, even though they weren't really
5 officers or board members of NOR; right?

6 MR. KOCH: Objection. Argumentative. Lacks
7 foundation.

8 THE COURT: Overruled.

9 THE WITNESS: Yeah, so again we disclosed what we
10 thought was most responsive to the application.

11 MR. KEMP: Okay.

12 THE WITNESS: Including the executive team, the
13 directors on the executive team.

14 BY MR. KEMP:

15 Q So when the application asks you for owners,
16 officers and board members, you thought that really meant
17 executive team. Is that what you're telling me?

18 A I'm trying to think back to the discussions that we
19 had with our team and with our counsel. But, yeah, we
20 believed we were being responsive to the application.

21 Q Okay. And you also put in Kimberly Lester, who is
22 the Director of Human Resources.

23 MR. KEMP: Can you pop that one up, Shane?

24 BY MR. KEMP:

25 Q And again, she's not an owner of NOR, nor a legally

1 recognized officer or director of NOR; correct?

2 A She's Director of Human Resources.

3 Q So the answer to my question is yes, she is not a
4 legally recognized officer or director of NOR, she's just
5 someone you call a director?

6 A You know, I actually don't know what the legal
7 definition is sitting here. I'm not a lawyer. But we believe
8 we were being responsive to the application.

9 Q Okay. Assuming that the board of directors has the
10 power to hire and fire officers and take other actions like
11 merging the corporation, approving a merger, she doesn't have
12 that power, does she?

13 A She has the authority to hire and fire, yes, within
14 her department. Yes.

15 Q Officers of the corporation, she has the authority
16 to hire and fire?

17 A I would say fairly high level, you know,
18 individuals.

19 Q But she has the authority -- she has the authority
20 to decide whether the corporation should merge or not or sell
21 itself?

22 A Not the sole authority, no.

23 Q She doesn't have any authority in that regard, does
24 she?

25 A I mean, she's a member of a small group of

1 executives that run the company.

2 Q Okay. All right. Let's take a look at Jeanine
3 Terrance, please. And we have her listed as -- what do we
4 have her listed as, an officer?

5 A Director of Finance.

6 Q Okay. And again, she's not a legally recognized
7 owner, officer or board member of NOR; right?

8 A She's a key executive that makes very important
9 strategic decisions on behalf of the company.

10 Q Okay. I understand she's a key executive, but my
11 question is she's not an owner, a legally recognized officer
12 or a legally recognized board member of NOR; right?

13 A You know, I don't -- I don't know that I can answer
14 that, other than saying she's an executive within the company.
15 She's not an owner. That's why we didn't put her in the
16 owners, you know, box.

17 Q Okay. But by having these three women listed even
18 though they weren't owners, legally recognized board members
19 or officers, would I not be correct that NOR got a better
20 diversity rating than it would have gotten?

21 A I'm not sure.

22 Q Well, I'm going to show you in a minute. If they
23 did get a better diversity rating, do you think that would be
24 wrong?

25 MR. KOCH: Objection. Argumentative. Lacks

1 foundation.

2 THE COURT: Overruled.

3 THE WITNESS: I believe the State did its best to
4 apply the rules to score our application. We put forth the
5 information we felt was pertinent and they scored it.

6 BY MR. KEMP:

7 Q And if I told you that MM Development did not list
8 their human resources director, which is a woman, did not list
9 their GM, which is a Hispanic, and did not list their
10 controller, which is an Asian woman, even though these are key
11 employees but not legally recognized board members or
12 officers, if they didn't list these three people, would you
13 agree with me that you got a diversity grade based on
14 something that other applicants potentially could have done
15 but didn't do?

16 A I do not know how MM Development is structured --

17 Q Okay.

18 A -- and how they operate their business.

19 Q So if you listed all these key employees, the three
20 women as owners, officers and board members but MM Development
21 didn't, how do we reconcile that now? Should we re-rate your
22 application, their application? What should we do?

23 MR. KOCH: Objection. Legal conclusion. Incomplete
24 hypothetical.

25 THE COURT: Overruled.

1 THE WITNESS: I think the Department has the
2 statutory authority to accept, review and grade applications.
3 It seems to me that the process was followed. And if M&M
4 regrets not including certain information or not describing
5 things in the way that they now would like to have done, I
6 don't know how to fix that.

7 BY MR. KEMP:

8 Q Well, do you think most of the applicants thought
9 that they should list real board members, legally recognized
10 ones, not just people that you call a director or a key
11 employee?

12 MR. KOCH: Objection. Speculation.

13 MR. KEMP: Do you think that's what most applicants
14 thought?

15 THE COURT: Overruled.

16 THE WITNESS: Well, I believe that all applicants
17 received the same application. All applicants had the
18 opportunity to ask the kind of questions you're asking now.
19 And all applicants submitted what they felt was in their best
20 interest to submit.

21 BY MR. KEMP:

22 Q And you're aware that Mr. Gilbert specifically
23 testified that an LLC like NOR should not list people as
24 directors because they don't have a board of directors. Are
25 you aware of that?

1 A I'm not.

2 MR. KEMP: Pop it up, Shane.

3 And, Your Honor, this is the same day, 203-20 to
4 203-2, which must be 204-2.

5 THE COURT: Thank you.

6 MR. KEMP: And, Your Honor, that S should be LLCs.
7 I think we've already written a letter to the court reporter
8 on that point.

9 THE COURT: And that would be on line 22?

10 MR. KEMP: Yes. On 24.

11 THE COURT: You think the word "Yes" should be LLC?

12 MR. KEMP: The S should be LLCs.

13 THE COURT: Oh. You're probably right.

14 MR. KEMP: Uh-huh.

15 THE COURT: But you were probably talking over
16 someone and so it got garbled and it got missed.

17 MR. KEMP: That couldn't have happened, Your Honor.
18 That was the first day.

19 MR. KOCH: Zing.

20 THE COURT: Sorry, Mr. Kemp.

21 MR. KEMP: No problem.

22 BY MR. KEMP:

23 Q They don't have boards of directors; right?

24 A Who is "they"?

25 Q They being LLCs.

1 A And again, I'm not a legal expert, but our LLC does
2 not have a board of directors.

3 Q It does not?

4 A That's what I said, yes.

5 Q I just want to make sure. Okay. And are you aware
6 that the Manpower graders did not let other applicants use key
7 employees to potentially boost their diversity scores?

8 MR. KOCH: Objection. Lacks foundation.

9 THE COURT: Overruled.

10 THE WITNESS: I'm not aware of what Manpower did or
11 did not do.

12 MR. KEMP: Your Honor, I move to admit Exhibit 129,
13 which is the scoring for Thrive.

14 THE COURT: Any objection to 129?

15 MR. KEMP: That's 129.

16 THE COURT: What pages of 129?

17 MR. KEMP: I'm on 394729, Your Honor.

18 THE COURT: So, hold on. Let's --

19 (Colloquy among the attorneys)

20 MR. KEMP: Your Honor, I just want to see if there's
21 anything that needs to be redacted. We're talking about the
22 evaluating -- the scoring sheets.

23 THE COURT: So we'll take a short break for you to
24 look at 129 and determine which page, if any, should be
25 admitted and if any additional redactions need to be made.

1 Dulce, if you could work with them on the original
2 129, which is in the book.

3 Sir, this is not a requested break. Five minutes.

4 (Court recessed from 2:01 p.m. until 2:07 p.m.)

5 THE COURT: Did we finish our review and discussion?

6 MR. KOCH: I don't know. They left.

7 THE COURT: They're gone.

8 (Pause in the proceedings)

9 THE COURT: All right. So did we have a chance to
10 review the proper portion of 129?

11 MR. KEMP: Yeah, they're okay, Your Honor.

12 THE COURT: Which page numbers? Since I'm only
13 admitting part of 129, which page numbers?

14 MR. KEMP: It would be 39472, Your Honor.

15 THE COURT: 39472.

16 MR. GUTIERREZ: It's supposed to have one more.

17 MR. KEMP: Yeah. There's another one that comes
18 later, though, Your Honor. Do you want to do them both now?

19 THE COURT: Only if you've agreed to them.

20 MR. KEMP: Yeah, we have agreed. The other one is
21 39473.

22 THE COURT: Is that correct, Mr. Gutierrez?

23 MR. GUTIERREZ: Yes, Your Honor. Those are the two
24 that we went -- we covered.

25 THE COURT: So pages 39472 and 39417 (sic) of 129

1 will be admitted.

2 MR. KEMP: All right.

3 THE COURT: Dulce wants to mark those two as 129A.

4 Is that okay with you, Mr. Kemp?

5 MR. KEMP: That's fine.

6 THE CLERK: Thank you.

7 MR. KEMP: Okay. Can you blow that up a little bit,
8 Shane?

9 BY MR. KEMP:

10 Q And, sir, I know you haven't seen this before, but
11 this is a comment made in the diversity section of the Thrive
12 app where the Manpower grader is talking about who they're
13 rating and who they're not rating. Do you see where it says,
14 "Not looking at key staff experience"?

15 A It says, "Not looking at" -- something -- "ownership
16 credit or key staff experience."

17 Q So apparently the Manpower graders rated some
18 applicants like you by giving them diversity credit for women
19 on their staff but other applicants didn't have the same
20 opportunity to earn diversity points.

21 MR. KOCH: Objection. Lacks foundation.

22 MR. KEMP: Is that fair?

23 THE COURT: Overruled.

24 THE WITNESS: Well, the folks we were just talking
25 about are officers in the company. We didn't select board

1 member, we didn't select owner, we selected officers. Right?

2 BY MR. KEMP:

3 Q They weren't legally recognized by the Secretary of
4 State of Nevada.

5 A They were officers in our company.

6 Q You called them officers; right? Right?

7 A Whose turn is it? Do you want me to --

8 Q Let me ask this. If you called --

9 THE COURT: Can you rephrase your question?

10 MR. KEMP: I will rephrase.

11 THE COURT: Thank you.

12 BY MR. KEMP:

13 Q If you called the janitor the director of
14 maintenance, would you consider her to be an officer of the
15 company that we should list for diversity credit?

16 A That's not what we did.

17 Q I'm just asking you. You seem to have a broad
18 definition of key employees here.

19 A Yeah, so those folks run the company. They manage
20 those 250 people. They're also shareholders, by the way.

21 Q But Thrive didn't get the same benefit because they
22 didn't get rated on their key staff, did they?

23 A Yeah, I'm not sure I agree with your comparison
24 here.

25 Q What is it you don't agree with?

1 A Well, number one, you're showing the one annotation
2 that I really don't understand the context of and asking me to
3 draw a direct comparison between this situation and ours, and
4 I'm just not comfortable with that.

5 Q Okay. One of the people you listed was the Director
6 of Human Resources, right, a woman?

7 A Correct.

8 Q And if MM Development had a director of human
9 resources, also a woman, that they were not given credit for,
10 would you at least agree with me that you two were treated
11 differently?

12 A Well, we consider that an officer of our company.
13 I don't know what they -- how they are structured.

14 Q So if you have someone that you call a director and
15 internally somewhere in your brain you think that they're an
16 officer, then you should list them on the State application
17 form as an officer of the applicant? Is that what you're
18 telling me?

19 A Yeah. We interpret it as someone who has
20 significant authority, who runs major departments and
21 divisions of the company, who has significant influence. We
22 consider them to be an officer, yes.

23 THE COURT: Sir, have you ever heard the phrase,
24 owners, officers and directors before, OOD?

25 THE WITNESS: I've heard it, you know, yes,

1 discussed.

2 THE COURT: What do you think it means?

3 THE WITNESS: So, owners own equity. Officers, you

4 know, are -- have significant authority within the company.

5 And directors, you know, members of the board of directors.

6 THE COURT: Okay. Thanks.

7 BY MR. KEMP:

8 Q Okay. Let's go back to Thrive and let's use them as

9 an example and see the situation they were in as far as

10 grading.

11 MR. KEMP: Can I have 129, 39449, please.

12 THE CLERK: Proposed.

13 BY MR. KEMP:

14 Q Okay. Do you see the people that they have rated on

15 the top there?

16 THE CLERK: I'm sorry, that's proposed.

17 MR. KEMP: Oh. I thought we admitted that, Your

18 Honor.

19 THE COURT: It's proposed. Dulce wins.

20 MR. KEMP: Yeah, it's okay. Yeah, we've agreed to

21 that.

22 MR. GUTIERREZ: No objection, Your Honor.

23 THE COURT: It will be admitted.

24 THE CLERK: Thank you. It will be 129B.

25 //

1 BY MR. KEMP:

2 Q So they have one woman out of seven members, which
3 was one out of seven or .14, and so they only got a 4
4 diversity rating because they did not list, you know, their
5 internal brain definition of officers or directors that you
6 did, you know, and so they got a lower diversity score than
7 you did. They got 4 and you got 8. Do you think that's
8 right?

9 A I'm not sure I really understand how the State even
10 did the scoring, so I don't know how to answer that.

11 Q Okay. And if you didn't understand, will you agree
12 with me that the other applicants probably didn't understand,
13 either?

14 A I mean, we knew diversity was a criteria. We knew
15 that we were asked to divulge who all of the, you know, board
16 members, owners and officers were and we felt that we did that
17 to the best of our ability. What happened after it was
18 submitted was unknown to us at the time.

19 Q Let me ask it this way. If the State had told you
20 that you could only use real board of directors, not advisory
21 board, real officers not someone who's not recognized by the
22 Secretary of State, would you have complied with that
23 directive?

24 A We did our best to comply with the application and
25 in hindsight would have absolutely complied with whatever

1 version of the application you're hypothetically coming up
2 with.

3 Q So if the State had been more specific you would
4 have complied with their directive; right?

5 A Yes.

6 Q Okay. And I'm not saying it's all your fault for
7 inconsistencies. It's partly the State's fault; right?

8 MR. KOCH: Objection. Argumentative.

9 THE COURT: Overruled.

10 THE WITNESS: What is the State's fault? I don't
11 understand your question.

12 BY MR. KEMP:

13 Q I just showed you that they rated some people for
14 MM Development and Thrive one way and they rated you another
15 way. You don't think that's an inconsistency?

16 A I'm not sure I have enough information and context
17 to make that evaluation.

18 Q Okay. Did the DOT provide guidance to you as to
19 whether or not to include key employees such as the Director
20 of Human Resources in the diversity section?

21 A We had lots of employees that weren't included in
22 that. We put only the people who run the company and have
23 significant authority that we consider officers of the
24 company.

25 Q Only the women?

1 A No. No, no, no, that's not true at all.

2 Q Okay. We'll go through the list in a minute.

3 A So we included our Director of Marketing, who's a
4 male, a white male, we included our Director of Retail, who's
5 also a white male, and others. It wasn't only selecting, hand
6 selecting people. To be honest, I didn't even know being a
7 woman was considered diversity. I did not know that at the
8 time. I thought --

9 Q You didn't --

10 A I'm still talking.

11 THE COURT: You've got to let him finish.

12 MR. KEMP: Okay.

13 THE WITNESS: I thought that --

14 THE COURT: We may not get done with him today and
15 he may not be able to leave, but you've got to let him finish.

16 MR. KEMP: It's his choice, Your Honor.

17 THE WITNESS: That's good. So we didn't hand pick,
18 cherry pick anyone. These are the people who run the company
19 that we considered officers, these director level people. And
20 anyone with that title -- our Director of Cultivation, he was
21 on there. He's not -- he's a white male. So it wasn't that
22 we selected only women to put on there for that purpose. We
23 were just trying to be as thorough and accurate as possible.

24 BY MR. KEMP:

25 Q So you did not know that when the legislature

1 included an amendment to the statute in the 2017 session that
2 you should consider the diversity of board members and you
3 should also look at minorities, women, gender, you didn't
4 think that included women?

5 A I didn't know specifically how they would view
6 gender versus race versus ethnicity, etcetera. I did not know
7 that at the time.

8 Q But you knew that women would be rated higher than
9 men. You did know that?

10 A Honestly, I don't recall what the definition of
11 diversity was at the time. I'm certainly generally familiar
12 with the change that was made to add diversity back in '17,
13 but, you know, maybe others involved in our team did know that
14 but that wasn't why these individuals were put on the
15 application. They were put on the application because they,
16 along with all the other people who were included in the same
17 category, actually run the company and have major
18 responsibility here in the state of Nevada for hundreds of
19 employees.

20 Q Okay. Now we have three different LLCs and we've
21 talked about them, NOR, the Thrive one and GreenMart, okay.
22 And I've already shown you that in GreenMart they were graded
23 on an advisory board and not on the officers or directors of
24 the parent. I've shown that to you. You were graded not on
25 an advisory board but on your definition of key employees as

1 officers or directors. And Thrive, they were graded a third
2 way using the existing ownership but not their key employees.
3 So we have three different ways that diversity is being graded
4 here. Would you agree with me that we should have one
5 consistent approach to grading diversity, not three different
6 approaches?

7 MR. KOCH: Objection. States facts not in evidence.

8 THE COURT: Overruled.

9 THE WITNESS: I believe the Department can only
10 evaluate applications as they're written and each applicant
11 has to make its best effort at providing the responsive
12 information.

13 BY MR. KEMP:

14 Q So we should have made up the diversity scoring
15 system after all the applications were filed?

16 A That's not what I said.

17 Q That's okay with you?

18 A That's not what I said.

19 Q Okay. Well, I've shown you the three different
20 approaches that were taken. Do you agree we should have had
21 one uniform procedure?

22 A I believe you're oversimplifying the process.

23 Q Well, I'm trying to. Do you agree that in those
24 three cases we should have at least treated the applicants the
25 same way? GreenMart should have had its officers and

1 directors of the parent graded if you did and Thrive should
2 have had its key employees graded if you did; right? It
3 should have been all the same; right?

4 A Now you're asking me to speculate on what applicants
5 may or may not have included in their application. I'm not
6 comfortable doing that. I mean, again, we put forth our best
7 effort and we were graded accordingly.

8 Q Okay. Let's bore in a little bit on this advisory
9 board we talked about. Would you agree that an LLC should not
10 be allowed to set up an advisory board full of women and
11 minorities just to try to increase its diversity grade?

12 MS. SHELL: Objection. Argumentative.

13 BY MR. KEMP:

14 Q And again, I'm not saying you did it, I'm saying in
15 the abstract would you agree that an applicant shouldn't be
16 allowed to do that?

17 THE COURT: And your objection was?

18 MS. SHELL: Argumentative, Your Honor.

19 THE COURT: Overruled.

20 MS. SHELL: Thank you.

21 THE WITNESS: I'm not -- I'm not familiar with --
22 you know, we didn't do that, so what another applicant should
23 or shouldn't have done is really up to the State to decide.

24 BY MR. KEMP:

25 Q Okay. And let me show you what Mr. Gilbert said.

1 MR. KEMP: And again, this is from the same day, 204
2 16-25 through 205-2.

3 BY MR. KEMP:

4 Q Do you agree with that?

5 A I mean, you're asking me to again go back and rehash
6 one statement from one mid-level manager from the State. I
7 don't know that -- I don't know that I have enough context to
8 opine on this statement.

9 Q Isn't Mr. Gilbert number two under Mr. Pupo in the
10 Department of Taxation?

11 A Something like that. I'm not sure.

12 Q So he's not mid-level, he's upper level; right?

13 A I'm not sure. He's never appeared to be in the
14 highest echelon, from my experience.

15 Q Okay. Did you give any consideration, you being
16 NOR, to creating an advisory board and put women and
17 minorities on it? Did you give any consideration to doing
18 that?

19 A No, I don't believe so.

20 Q And you didn't consider doing that because you knew
21 it was wrong; right?

22 A That's just not how we're structured. We were
23 thorough, accurate and, you know, consistent in how we operate
24 the company. I didn't think of that hypothetical structure
25 because it doesn't really apply to us. We put down who the

1 actual people are that run the company. If you go to our
2 office right now, you'll find those same people with their
3 name on a business card with those titles running the company
4 as shareholders and executives within our company. It's not
5 some made up board, they're real people.

6 Q I'm not saying they're not real people. I'm saying
7 they're not real officers and directors. Do you see the
8 difference?

9 A I'm beginning to see the point you're trying to
10 make, but that's not how our company is structured.

11 Q Okay. Let me ask a different question. You have a
12 lot of women on the Xanthic board; right?

13 A What's your definition of a lot?

14 Q More than two or three.

15 A Would you please pull it up so we can look at the
16 actual thing instead of speaking about it abstractly?

17 MR. KEMP: Shane, can we have Exhibit 127, 12
18 through 13 again.

19 BY MR. KEMP:

20 Q Carli. We have Carli, right, that's a woman?

21 A Yes.

22 Q And we've already talked about Stultz (sic); right?

23 A Liesl Sicz?

24 Q Yeah, Sicz. I'm sorry.

25 A Yes. Uh-huh.

1 Q And the other woman up there is one you mentioned,
2 she's one of the partners; right? Joan -- how do you say her
3 last name?

4 A Jean Schottenstein.

5 Q Okay. So you have at least three on the board of
6 Xanthic; correct?

7 A Carrie Closener (phonetic), Jean Schottenstein, and
8 who's the third one you mentioned?

9 Q Well, you also have Liesl. She's not on the board
10 of Xanthic. She's the owner of Harvest; right?

11 A She's a founding owner and owner of Harvest, which
12 is a member of NOR LLC. Yes.

13 Q Right. So you have at least three; right?

14 A At least three women in the company?

15 Q In the ownership structure or the director
16 structure.

17 A Okay.

18 Q Okay. Would you agree with me that whether those
19 people are women or men, would you agree with me that that is
20 not directly and demonstrably related to the operation of a
21 marijuana business, whether those three people are men or
22 women?

23 A I'm not sure I understand your question.

24 Q In general do you think diversity is directly and
25 demonstrably related to the operation of a marijuana business?

1 A I mean, if you're asking if you can run a company, a
2 multi-million dollar company with 200 plus employees with only
3 men, I don't know if that's realistic or feasible. Are you
4 asking like how important it is to have women in a company?

5 Q No. I'm asking whether you think gender, being a
6 man or woman, whether you think that's directly and
7 demonstrably related to the operation of a marijuana business?

8 A I mean, at the end of the day a marijuana company
9 isn't dissimilar from any other company, okay, so take that
10 out of the equation. You're asking how important is it to
11 have mixed genders in a company? I think it's important.

12 Q Do you think it's directly and demonstrably related
13 to the operation of the business, as opposed to unimportant?

14 A I think I already answered that.

15 Q Well, you gave an answer. Was that a yes answer or
16 no?

17 A I think it's important to any company to have, you
18 know, a variety of genders.

19 Q Would I be correct that the Governor's Task Force
20 that you sat on did not consider diversity? That wasn't a
21 recommended factor for --

22 A I don't recall off the top of my head.

23 Q Okay. And the DOT treated owners, board members and
24 officers equally for this diversity calculation. Do you
25 understand that?

1 A I am actually unaware of that. I don't know --

2 Q Okay.

3 A -- how hat was handled behind the scenes.

4 Q Are you familiar with other governmental entities
5 like the Department of Aviation at the Clark County airport
6 that focus on ownership as opposed to officers and directors
7 for diversity purposes?

8 A No, I'm not. I'm not familiar with the Department
9 of Aviation.

10 Q Do you think that ownership for diversity purposes
11 should be more heavily weighed than, say, for example, an
12 advisory board?

13 A I would say that that really depends on the company
14 and how it's structured and how it actually operates.

15 Q Would I be correct that there's only one company,
16 marijuana company owned by minorities here in Clark County out
17 of the eighty?

18 A I don't know that.

19 Q Only Mr. Hawkins' company, one out of eighty; right?

20 A I certainly know Mr. Hawkins, but I don't know that
21 I can comment on his ownership as compared to all the other
22 companies in the county or the state.

23 Q Do you know any other dispensaries owned by
24 minorities other than Mr. Hawkins?

25 A So, we have a board member who's African-American.

1 I know other companies who have --

2 Q Owned. Owned, not board members. Owned.

3 A And what do you -- I mean --

4 Q Owned means owned. You own the shares or you own
5 that LLC membership. Do you know --

6 THE COURT: Remember how you told me owned meant
7 equity? That's what we're talking about.

8 THE WITNESS: Fair enough. I can't recall any off
9 the top of my head.

10 BY MR. KEMP:

11 Q There are none, are there?

12 A I don't know.

13 Q Assuming it is Mr. Hawkins is the sole minority
14 owner and it's one out of eighty, that's 2.5 percent of the
15 marijuana dispensaries in town; right?

16 A Do you want me to get out my calculator and confirm
17 that?

18 Q Well, why don't we just assume that that's 2.5
19 percent.

20 A Fair enough.

21 Q Do you think -- or actually it's 1.25 percent. I'm
22 wrong. It's 1.25.

23 MR. KEMP: I thought you were going to jump in
24 there, Judge.

25 THE COURT: I'm not doing that today.

1 MR. KEMP: Okay.

2 BY MR. KEMP:

3 Q 1.25 percent. Do you think that's really what the
4 legislature intended when they changed the statute in 2017 to
5 try to encourage diversity ownership?

6 MR. KOCH: Objection. Speculation.

7 THE COURT: Overruled.

8 THE WITNESS: I can't comment on the legislature's
9 intention.

10 BY MR. KEMP:

11 Q Okay. Well, whatever it was, would you agree with
12 me that the diversity really hasn't worked because we only
13 have 1.25 percent ownership now?

14 A Look, what I can say is that the diversity
15 requirement came after the fact. It wasn't part of the
16 initial medical applications. And if you think about it, the
17 only people who could apply for these new licenses, the
18 universe of applicants was set back in 2014 when the medical
19 licenses were awarded. So the time to implement diversity was
20 back then when we were creating the universe of applicants, in
21 my opinion. So we're kind of -- you know, kind of tweaking
22 the system, trying to make it better by adding diversity, you
23 know, later on. But I think it's -- you have to add some
24 context to the kind of hypothetical exercise that you seem to
25 really enjoy to go back and try to recreate how the program

1 would work, and how it would be shaped today would be very
2 different.

3 Q Okay. We had a ballot initiative; correct?

4 A Yes.

5 Q And that's why we have rec because of the ballot
6 initiative; right?

7 A Correct.

8 Q And that was passed in November of 2016; right?

9 A Yes.

10 Q And that did not include diversity; right?

11 A I do not believe so.

12 Q Okay. And November 2016, three years hasn't passed
13 yet, has it?

14 A Between what and what?

15 Q Between November 2016 and the present day.

16 A Correct.

17 Q So the ballot initiative cannot be changed by the
18 legislature for three years; right?

19 A Correct.

20 Q So diversity shouldn't have been used at all, should
21 it?

22 A Well, you're ignoring the part of the regulations
23 that state that the Department has authority to run the
24 department or run the program, accept and grade, score
25 applications and award licenses.

1 Q So your position is that the legislature can't
2 change the ballot initiative for three years but the
3 Department of Taxation can. Is that what you're telling me?

4 A No.

5 Q Okay. So you would agree that we cannot change the
6 ballot initiative until November of 2019; correct?

7 A My understanding of Nevada law, and again, you're
8 asking me to opine on legal issues here, but my understanding
9 is that the major components of a ballot measure cannot be
10 altered by the legislature for three years after its passage.
11 But I also understand that the Department has been given
12 statutory discretion to run the Department and to administer
13 the program.

14 Q Would you consider 20 points out of 250 to be a
15 major portion of the application?

16 A I would say it's significant.

17 Q Well, okay. All right. Let's talk about building
18 address. Earlier I told you that there were two different
19 applications; right?

20 A I don't believe we covered that.

21 Q Okay. Are you aware that the applicants in this
22 case -- we're referring to the 462 -- some of them filed one
23 application that said either you had to be an owner or you had
24 to provide a landlord's letter for a lease situation, and
25 others provided an application that had different wording.

1 Are you aware of that?

2 THE COURT: Mr. Kemp, you're referring to the
3 existence of two different forms?

4 MR. KEMP: Right.

5 THE COURT: Thank you.

6 THE WITNESS: I'm aware that the State had previous
7 drafts of the application, but there was only one application
8 that was applicable at the time the application period opened.
9 BY MR. KEMP:

10 Q So if I told you the application that required
11 ownership or the landlord's letter was on the State website as
12 recently as two weeks ago, that would be a shock to you?

13 A I don't know that I would be shocked. I mean,
14 people make mistakes. The Department of Transportation (sic)
15 is not immune from having potentially --

16 THE COURT: Department of Taxation?

17 MR. KOCH: Taxation.

18 THE WITNESS: What did I say?

19 THE COURT: Transportation.

20 THE WITNESS: Yeah. I guess somebody jinxed it
21 earlier. But anyway, yes, Department of Taxation. Thank you.
22 BY MR. KEMP:

23 Q Transportation screws up, too.

24 A Yeah, maybe. So, yeah, is it possible that they had
25 an outdated version of the application? I did not see that

1 specifically. I heard that that had occurred. I wouldn't be
2 shocked. But that's a technicality. The big picture here is
3 what was applicable at the day the application period opened.
4 And if someone wasn't paying attention close enough to
5 understand which form was appropriate for such a large
6 endeavor and commitment, then, you know, I don't know that you
7 can really blame the Department for that.

8 Q Okay. And the application notice was published July
9 6th, I believe.

10 A Somewhere around there, as far as I can recall.

11 Q And the final day was September 20th; right?

12 A Something like that.

13 Q So between the time period of July 6th through
14 September 20th, you personally didn't know that there were two
15 forms, is that correct?

16 A I don't recall. I knew that they were -- they had
17 previously been discussing the location requirements, whether
18 or not to require a secured, you know, location and that kind
19 of thing, but, you know, we paid pretty close attention to the
20 whole process. We were part of the Listserv. And we were not
21 confused by the fact that there were previous versions of the
22 application. It was pretty clear to us which form to use.

23 Q You didn't even know there were two forms. What do
24 you mean you were sure which form to use?

25 A We were not confused by that. We knew which form to

1 use.

2 Q Well, if you didn't know there were two forms, how
3 could you be confused?

4 A I don't know that there were two forms. I don't
5 know -- I now know that there were two forms, but I'm not sure
6 if they actually published it or not. But for us it wasn't a
7 point of discussion. We got the form, we followed it and
8 submitted our application.

9 Q Okay. Let's talk about the address requirement a
10 little bit. Earlier you referenced the Task Force's
11 recommendation that the address requirement be dispensed with;
12 right?

13 A I wouldn't call it the address requirement. It's
14 more of securing a location and using that location as a basis
15 for grading on the application. As we now know, the
16 application did have a spot for address; it just wasn't
17 graded. There were no points assigned to it, so it was more
18 of a guidance than it was a requirement.

19 Q Would I be correct that NRS 453D.210 that was in
20 effect when the application was filed required that an address
21 be submitted as part of the application?

22 A Can you show that to me? I don't have that
23 memorized.

24 Q Well, let me read it to you. Section (b): "The
25 physical address where the" --

1 THE COURT: So you're on 5(b)?

2 MR. KEMP: That's correct, Your Honor, 5(b).

3 BY MR. KEMP:

4 Q Quote: "The physical address where the proposed
5 establishment will operate is owned by the applicant or the
6 applicant has the written permission of the property owner to
7 operate the proposed marijuana establishment on that property"
8 -- semicolon, close quote. That's what the statute says;
9 right?

10 A If you say so. I don't have it in front of me.

11 Q Do you want to look at it?

12 THE COURT: He correctly read it.

13 THE WITNESS: Okay. I'll take the Judge's word for
14 it.

15 BY MR. KEMP:

16 Q Okay. And that statute got amended, at least parts
17 of it did, in the legislative session that just ended in 2019;
18 right? You're familiar with AB533?

19 A Yes, generally.

20 Q And it amended part of that statute; right?

21 A I believe so.

22 Q But it didn't amend that part that requires a
23 physical address; right?

24 A I'm not sure.

25 Q Okay. Now, the statutes as enacted by the

1 legislature, that's the law, right, not the Task Force
2 recommendations?

3 A Correct.

4 Q So basically instead of following the law that I've
5 just read, the DOT decided to follow the Task Force
6 recommendation, no address required; right?

7 MR. KOCH: Objection. Legal conclusion.
8 Argumentative.

9 THE WITNESS: Well, I believe --

10 THE COURT: Overruled.

11 THE WITNESS: I'm sorry. I believe the Department
12 used its own, you know, statutory authority to create an
13 application that was, you know, responsive to, you know,
14 Question 2 and the regulations.

15 BY MR. KEMP:

16 Q Well, that's not really what happened, is it, sir?
17 You know what really happened, don't you? Certain applicants
18 were having trouble getting landlords to sign leases or to
19 sign landlord letters. It was costing them a lot of money, so
20 certain applicants and their attorneys went to the Department
21 and begged for some relief. Isn't that what really happened
22 here?

23 A Not to my knowledge.

24 Q Not to your knowledge?

25 A Yeah.

1 Q To your knowledge there was no address required as
2 of July 6th; right? That's your knowledge?

3 A My knowledge and understanding was that the location
4 was not required on the application, in part because of all of
5 the issues that it caused in 2014.

6 Q Okay.

7 MR. KEMP: Shane, can I have Exhibit 5, page 13, the
8 building section.

9 BY MR. KEMP:

10 Q Now, that section, you're supposed to include
11 documentation establishing the adequacy of size of the
12 building; right?

13 A Yes.

14 Q Did NOR put in generic building plans or did they
15 put in building-specific plans for specific buildings and
16 specific addresses?

17 A Both.

18 Q Okay. So some of your applications you had generic
19 plans and some you had specific addresses, is that correct?

20 A What I mean by that is we actually took our existing
21 dispensary floor plan and layout and removed any identifying
22 information from that, and so in a sense it was an actual, you
23 know, layout of a functioning store that had been approved in
24 the state but did not have any identifying information on it.

25 Q Well, let me ask it a little differently, then. So

1 for the eight applications NOR and HOR put in -- there were
2 eight; right?

3 A Yes.

4 Q Did you have a building address for any of the
5 eight?

6 A We had to provide an address, I believe, in another
7 part of the application, but for this particular section this
8 is non-identified, and so we had a non-identified floor plan
9 with context and language and description that is based on our
10 existing store today.

11 Q Okay. Does that mean you did have a piece of
12 property that you owned or under lease for each one of these
13 eight or you did not?

14 A We provided addresses for them according to the
15 application.

16 Q Okay. Let's go down each one, then. RD215, did you
17 provide a specific building address?

18 A Yes.

19 Q 16, a specific building address?

20 A I believe so.

21 Q 17?

22 A The answer to all of them is I believe we did.

23 Q So you think you had specific building addresses for
24 each of them, is that correct?

25 A I believe so, yes.

1 Q Did you have landlord letters? Well, wait, wait,
2 wait, wait, wait. I think I see what's happening here. By
3 specific building address, you're not talking about Post
4 Office Etcetera or something like that; right? You're talking
5 about a real building where you're going to put the
6 dispensary. Did you provide that?

7 A We had addresses that were within each jurisdiction
8 that we felt met the requirements of the application.

9 Q Okay. Did you have addresses for a building where
10 you were going to build a dispensary or did you have post
11 office boxes or UPS addresses?

12 A We had addresses that we felt met the requirements
13 of the application.

14 Q Where they UPS addresses?

15 A I can't -- I don't recall what they were for.

16 Q Did you have a landlord's letter for each one of --
17 for any of the eight applications?

18 A Was that a requirement in the application? I don't
19 recall.

20 THE COURT: Sir, it's a yes or no.

21 THE WITNESS: I don't believe so.

22 BY MR. KEMP:

23 Q Okay. And did you own any of the addresses that you
24 referenced in the eight applications?

25 A I don't recall.

1 Q There's been testimony that some people used a UPS
2 or something like that, a Post Office Etcetera, they used that
3 address. Did you do that?

4 A We may have.

5 Q Okay. So if you did that, the building plan
6 couldn't be specifically tailored to whatever you ultimately
7 would build, is that correct?

8 A To the extent that that happened, that would be
9 correct. However, as I explained earlier, our building plan
10 was based on our existing store that could be built with minor
11 tweaks just about anywhere.

12 Q Okay. Nothing better than using an existing store
13 because that's already been approved; right?

14 A And we were comfortable with it. We operate a
15 certain way. We have our tellers in one window and we have
16 check-ins a certain way. So operationally it was already
17 designed to support how we operate our retail operations.

18 Q Okay. But if you were trying to prove that you
19 could build something in 12 months, there would be nothing
20 better to submit than an existing operating dispensary; right?

21 A I mean, I'm sure your client would like to make that
22 argument, but, you know, that wasn't why we submitted it the
23 way we did. We submitted our floor plan the way we did
24 because that's how we operate, we're very successful in this
25 market, and that supports our operations, our security, our

1 training, customer flow, packaging, product flow, et cetera.
2 That's why we did it, not because we already had a store that
3 we abandoned that we were trying to retrofit.

4 Q Can we agree to a term to call the floor plan that
5 you used generic floor plan, whatever you want? Give me a
6 term.

7 A Floor plan.

8 Q Okay. So with regards to the NOR floor plan, do you
9 think that the NOR floor plan that you provided for eight
10 different jurisdictions, do you think that that provides
11 greater evidence that you can actually build a dispensary in
12 12 months than an existing dispensary that had been in
13 operation for years would provide?

14 A That's not a hypothetical I really contemplated. I
15 mean, it's a very unique circumstance you're bringing up.

16 Q I'm not disagreeing that it's a unique circumstance,
17 but okay.

18 MR. KEMP: Can I have the NOR scores, please, for
19 building construction.

20 BY MR. KEMP:

21 Q These are the scores that the Manpower graders gave
22 NOR to the NOR floor plan in these eight different
23 jurisdictions, okay. Do they look familiar?

24 A I actually haven't seen this before, but I'll take
25 your word for it.

1 Q Okay. Well, your attorney will jump up and yell and
2 scream if I'm lying. All right. So let's focus on 15 and 16.
3 Those are in two completely different jurisdictions; right?

4 A I would assume so. Again, I'm not sure how those
5 are coded. I don't know where this ID number came from or
6 what they correlate to.

7 Q Okay. But you only filed on application for
8 jurisdiction?

9 A Correct.

10 Q Okay. In other words, you didn't set up two LLCs
11 and file multiple applications; right?

12 A That's correct.

13 Q And the reason you didn't set up the two LLCs and
14 file multiple applications is you at least understood that was
15 not the way to go, that was inappropriate?

16 A Well, I believed that NOR was the applicant. NOR
17 was the licensed medical marijuana company that qualified to
18 apply for these licenses.

19 Q So you thought -- if you had you could file more
20 than one application, you would have done that, because you
21 could have got two dispensary licenses, potentially, in Clark
22 County or two in to city of Las Vegas; right?

23 A Potentially.

24 Q Okay. But you didn't do that because you knew that
25 NOR could only file one application; right? In each

1 jurisdiction.

2 A That was not our strategy. I mean, we -- NOR was
3 the existing licensee, existing operator, and that's the
4 entity that applied.

5 Q Okay. Let's get back to building construction on
6 215 and 216. Two different jurisdictions. And I think this
7 is the County and the City; right? Right?

8 A I don't know.

9 Q Okay. You know it's different jurisdictions,
10 though, because you only filed one [inaudible].

11 A Yes. I believe so.

12 Q And you got the exact same score for building
13 construction in two different jurisdictions, 16.33. Do you
14 see that?

15 A Yes.

16 Q Can you explain to me how a building in two
17 different jurisdictions could be rated exactly alike down to
18 the hundredth decimal point?

19 A No.

20 Q It's incomprehensible; right?

21 A I wouldn't say that. I just -- I'm not familiar
22 with the rationale behind it.

23 Q Okay. And then the next group of applications you
24 had, 17, 18, 19, 20, 21, those are filed in five different
25 jurisdictions; right?

1 A Six.

2 Q 17 is the last one. I'm talking about 1, 2, 3, 4,
3 5.

4 A Oh. Those five, that .33?

5 Q Yes.

6 A Yes. Okay.

7 Q Okay. So five different jurisdictions. And you got
8 the exact same rating down to the second decimal point; right?

9 A Yes.

10 Q Okay. So these were five different UPS addresses in
11 five different jurisdictions?

12 A I don't know.

13 Q They weren't real buildings; right? I mean, real
14 buildings --

15 A Well, of course they were real buildings.

16 Q -- real buildings that you were going to put a
17 dispensary in; right?

18 A I don't recall. We own, you know, commercial real
19 estate throughout the state, and it may have been some of that
20 here. I don't know. I don't remember.

21 Q The same question. Can you explain to me how the
22 NOR floor plan got the exact rating in five jurisdictions?

23 A No, I cannot. I wasn't part of the grading process.

24 Q And can you explain how the same floor plan got a
25 16.33 in the first two jurisdictions, but the exact same floor

1 plan was rated in the next five a point higher?

2 A I mean, I can speculate. I mean, it could have
3 something to with the population with regard to the relative
4 size of the floor plan. Maybe there was some thought that a
5 larger store could serve a large population better. I don't
6 know. That's complete conjecture on my part. But, like I
7 said, I wasn't privy to how this was scored, and so I can't
8 really, you know, say why there are two different scores.

9 Q Would it surprise you if I told you that all eight
10 of these for building addresses where there's not going to be
11 a real dispensary, okay, either at the UPS box or whatever,
12 all eight of your applications scored higher in this category
13 than MM's application for a real building, a real dispensary
14 that had been in operation for three years? Would that
15 surprise you?

16 A Not necessarily, no. I can tell you that --

17 Q And is that --

18 A -- we went through a lot of effort to explain how we
19 operate. It's like saying, here's a floor plan I found off
20 the Internet, go with it, versus something that, you know, we
21 know how to operate in this floor plan, it supports our
22 operations. So it wasn't just a floor plan submitted on its
23 own. I believe we provided a lot of -- a lot of information
24 about the floor plan and why it works and how -- why we
25 thought it strengthened our application.

1 Q But MM Development had an actual dispensary that had
2 been operated for years, and they got rated lower than your
3 generic floor plan at a Post Office box address. That
4 doesn't --

5 A That doesn't mean that they operate well.

6 Q Have you been to the -- were you at their
7 dispensary?

8 A Yes.

9 Q You don't think that dispensary's operated well?

10 A I'm not saying that. You're saying just because it
11 was in existence means that it's a superior floor plan. And I
12 disagreed with that assertion.

13 Q Okay. Other applications that also used generic
14 floor plans also got even higher ratings than this; right?

15 A I don't know.

16 Q Okay. Are you familiar with Thrive?

17 A Yes.

18 Q Let me show you some of their ratings.

19 THE COURT: What document?

20 MR. KEMP: This is just demonstrative, Your Honor.

21 THE COURT: So are you going to give it some
22 demonstratives at the end of the day?

23 MR. KEMP: Well, actually there's documents that
24 actually support this if --

25 THE COURT: Well, but, I mean, you have a

1 demonstrative you're showing. So are you going to give me a
2 slide?

3 MR. KEMP: Yes, we are, Your Honor.

4 THE COURT: Great. Good. Keep going.

5 BY MR. KEMP:

6 Q Okay. So we have the same 19.67 rating for five
7 places from Clark County to Elko. See that?

8 A Yes.

9 Q And we got the same 19.33 grading for the same --
10 for places from Clark County to Nye County; right?

11 A Yes.

12 Q Seems pretty consistent to me. Does it seem
13 consistent to you?

14 A Well, I see that the number 19.33 applies to Clark,
15 Las Vegas, Reno, and Nye.

16 Q And I assume that you have no explanation for how
17 Thrive got generic plans rated at 19.67 or 19.33 and MM's
18 actual building was only rated 15.33.

19 A I'm not sure that's what the application called for.
20 I think you're kind of trying to project your own idea of how
21 the application should have been post mortem.

22 Q Okay. So you think that an existing building that
23 had been operating for years could not be put in as a proposed
24 building in the application process? Is that what you think?

25 A Nope. Didn't say that.

1 Q Okay. Do you think this is kind of a bait and
2 switch here? In other words, you tell the Department that
3 you're going to build a building using generic plans at a Post
4 Office box address and then you switch it over and you build
5 something different at a different address. You think that's
6 a bait and switch, get the high points and then switch over to
7 something else?

8 A Not at all. It's quite the opposite. We are a
9 proven, experienced operator with a stellar track record that
10 took our existing floor plan that had been very carefully
11 designed and not only provided a floor plan -- the building's
12 a building. The more important thing to me is showing how
13 you're going to meet the needs of the community, how your
14 floor plan supports the business. You're looking at this very
15 differently than I would.

16 Q Well, do you think --

17 A I'm --

18 THE COURT: He's not done.

19 THE WITNESS: So, in addition to the floor plan and
20 talking about the building, it's really how do you use that to
21 serve the needs of the customers within that community. And
22 we went to great lengths to do that in our application .

23 BY MR. KEMP:

24 Q Right.

25 A And so just because MM had abandoned their location

1 on Sunset to go after the tourist, you know, market, doesn't
2 mean that they're somehow proven that they know how to operate
3 better. So what? They had another location. Big deal. We
4 had a location that saw three times, two and a half, two
5 times, something like that, the number of customers on a daily
6 basis that was proven, that we demonstrated, in my opinion,
7 that we knew how to operate and serve the needs of community.

8 Q Okay. I started off talking about building ratings,
9 which are 20, and you moved over to a different section,
10 community impact, which is 15 points; right? Different
11 sections.

12 A No. I did not do that.

13 Q Community impact isn't different than building?

14 A That's not what I said.

15 Q Is community impact different than building?

16 A It's a different section. But if you go back to
17 what this section called for, it talked about adequacy of
18 serving the needs of the customer and adequacy of size. And
19 that's what I was talking about.

20 Q How could you make an objective determination that
21 the size was adequate if you didn't even know where the
22 building was, didn't whether it's going to be one story or two
23 story, didn't know whether it's in a strip center or stand
24 alone? How can you decide that a building's adequate if you
25 don't know how big it's going to be?

1 A Because we're providing a floor plan based on how we
2 currently operate, and so we have -- we're in a very good
3 position, actually, to describe that. And I think we did so
4 very well.

5 Q Now, with regards to the NOR floor plan that you
6 used for the eight applications would or would not that have a
7 different impact in different communities?

8 A It may need to be tailored slightly. You know,
9 Starbucks has certain prototypes that they build in various
10 communities, and they tweak it based on the building and the
11 community. And we anticipated doing the same thing.

12 Q You anticipated doing it, but you didn't do it in
13 the application.

14 A Well, there wasn't -- it wasn't possible to submit
15 eight different floor plans. It was one application.

16 Q Would I be correct that NOR got the exact same grade
17 for community impact in its eight different applications filed
18 in eight different jurisdictions?

19 A I believe so. I don't know that for sure. I
20 haven't seen it. But I believe that's the case, deducing the
21 score is based on the size adequacy thing.

22 MR. KEMP: Let me have my next slide, please, Shane.
23 It's the community impact rating.

24 BY MR. KEMP:

25 Q Okay. 14.33, 14.33, 14.33, all the way down for all

1 eight applications; right? Right?

2 A Yes.

3 Q Eight different communities all across the state,
4 and you have the same community impact; right?

5 A The score is the same.

6 Q Earlier -- you know Dave Thomas; right?

7 A Yes.

8 Q He explained to us why the community impact of a
9 marijuana store say on East Boulder Highway would potentially
10 be different than a marijuana store in Summerlin. So he
11 explained that. Do you agree that the potential community
12 impact would be different if you were those two types of
13 diverse locations?

14 A I mean, it depends how you write your application. I
15 think we wrote ours in such a way that we demonstrated not
16 only our historical commitment and efforts to make a positive
17 impact to the community, but broad strategies going forward.
18 And so, I mean, if -- I guess if you drill down to the, you
19 know, certain level of detail, it could vary neighborhood by
20 neighborhood. But I think the way that we approached it with
21 our -- the way that we have always provided classes on a
22 monthly basis, now we do it twice a month, from the doctor to
23 the community, how we do community outreach, how we volunteer
24 with veterans organizations and et cetera, et cetera, those
25 are all, you know, similar kinds of general strategies.

1 Q Everybody does the volunteering with the veterans
2 and what -- everybody does that; right?

3 A So you're saying we're not unique?

4 Q Well, I'm saying that other people do the same
5 things you've described. Do you think those things justify
6 having a community impact score of 14.33 in eight different
7 jurisdictions where you don't say exactly where the
8 dispensary's going to be built?

9 A I think we did an excellent job not only of actually
10 doing the things we said we were going to do, but making a
11 strong commitment to the community. I love to talk about it.

12 Q Okay. You also got one of the highest, if not the
13 highest, ratings for care, quality, and safekeeping; correct?

14 A I don't know that.

15 MR. KEMP: Can I have my next slide, Shane.

16 BY MR. KEMP:

17 Q 82.67. I think there was only one other applicant
18 that might have been slightly ahead of this, but this was a
19 very high score, that 90.10; correct?

20 A This is the first time I'm actually seeing this, so
21 I don't know.

22 Q Now, care, quality, and safekeeping, that means when
23 the marijuana comes into the dispensary you take -- in general
24 you have tracking maps that safeguards, make sure you're
25 selling it to the right people. That's what care, quality,

1 and safekeeping is?

2 A I mean, that's a part of it. I would use a much
3 different way of describing it, but I think you're generally
4 pointed in the right direction there.

5 Q Okay. And I assume you must have some formal
6 written plan for care, quality, and safekeeping.

7 A What do you mean by that?

8 Q Don't you have a procedure manual or a plan or
9 something?

10 A The "care, quality, and safekeeping" are words from
11 the application.

12 Q Okay. And you didn't just say, I promise I'm going
13 to do a really, really good job and get an 82.67. You put in
14 some backup information?

15 A Quite a bit, yes.

16 Q And the backup information included a plan or
17 procedure?

18 A Yes. So are you asking about our SOPs and policies
19 and procedures, or are you asking what types of information we
20 put responsive to the application questions?

21 Q Rightly. You put in something there that would
22 demonstrate that you had a good care, quality, and safekeeping
23 procedure; right?

24 A Yes. We tried to address that the best we could.

25 Q And whatever you put in there, is that what you were

1 using already for NOR, or is this some new invention?

2 A Well, I think it's a combination. So, you know,
3 over the years we've certainly gotten better at certain
4 things, and so we've adapted our SOPs and our different, you
5 know, processes that we use to operate the company. So part
6 of it is describing how we've done that in the past and how
7 well we think we've done in that category, but another part of
8 it is describing how we would also do that in new locations
9 and new -- you know, going forward.

10 Q Okay. And you said you had a, quote, "stellar,"
11 unquote, track record with regards to care, quality, and
12 safekeeping?

13 A In my opinion, yes.

14 Q Okay. And isn't it true -- Counsel went over it
15 with you a little bit. Isn't it true that NOR, or rather HOR
16 sold marijuana to an underage person?

17 A Another entity, a sister company, did have an
18 incident that we discussed earlier where we found it in our
19 internal audit, reported it to the State, and addressed it.

20 Q Did you find it, or did that person's mother call up
21 and yell and scream at your manager? What really happened
22 here? Would you like to look at the incident report?

23 A We found it.

24 Q You found it.

25 A We identified the issue, and we corrected it, and we

1 ended up terminating the employee who was responsible for
2 allowing that customer to be checked in.

3 Q And this is incident happened just months before the
4 applications were being [inaudible].

5 A I believe so.

6 MR. KEMP: Can I have Exhibit 96, which is an
7 admitted exhibit.

8 BY MR. KEMP:

9 Q Have you seen this before, sir?

10 A It's hard to read. I believe this was admitted --
11 or in the proceedings earlier.

12 Q Okay. And so sometime in or around April or May of
13 2018, two months before the July notice was published,
14 sometime in that time period you had this incident of selling
15 to an underage person; correct?

16 A Well, when you say underage, they were not a minor.
17 They were under 21, but older than 18.

18 Q Okay. Well --

19 A And, yes, an incident did occur at a different
20 company, different entity. We discovered that incident, we
21 corrected it, we self reported it, and handled it in the most
22 forthright way we have.

23 Q And this is your actual compliance history, that you
24 actually sold to an underage person; right?

25 A No. That's an isolated incident that occurred. I

1 don't think it's fair to say that is our compliance history.

2 Q Oh.

3 A We are one of the highest-volume stores in the
4 state, and we have 60, 70 employees at each location. We see
5 over a thousand people a day. And given the volume of
6 business that we have handled, I think we've done an excellent
7 job of following the regulations.

8 Q Okay. Well, let's talk about selling to minors or
9 selling to underage persons, as you want to put it.

10 A So are you -- by going down this line are you saying
11 that Henderson Organic Remedies is the same as Nevada Organic
12 Remedies, which is the applicant and the party in this case?

13 MR. PARKER: Your Honor, can I just make a quick
14 objection. The witness is now asking questions, as opposed to
15 answering.

16 THE COURT: So the attorneys don't have to answer
17 him. He can ask all he wants. Because if he does not finish
18 this afternoon, he will be back tomorrow morning at 9:30.

19 BY MR. KEMP:

20 Q Henderson Organic Remedies uses the same care,
21 quality, and safekeeping plan as NOR? Sister company; right?

22 A Henderson did not apply for their licenses.

23 Q I didn't ask that.

24 A Not because of this incident, but, you know, there
25 is some common ownership, if that's what you're asking.

1 Q Did they use the same care, quality, and safekeeping
2 plan as NOR?

3 A I don't know what you're asking. Because, again,
4 this -- the care, safekeeping, and quality is a section of an
5 application. Henderson did not apply for licenses, so I'm not
6 really able to answer that.

7 Q Okay. Let's get back to selling to underage
8 persons. Are you aware of any instances where say, for
9 example, Mr. Hawkins's facility was accused of that?

10 A I'm not aware.

11 Q Anybody else other than Henderson Organic Remedies?

12 A I'm sure it's happened before, but I don't --

13 Q I'm not asking what you're sure about. I'm asking
14 if you know of any other instances --

15 A I've never asked another licensee if that's occurred
16 in their facility.

17 Q So as far as your personal knowledge, you are the
18 only dispensary in Clark County that has been involved in an
19 underage sale; is that correct?

20 A I wouldn't say that. Because I've kind of heard
21 enough to know that it's happened before. I just can't sit
22 here and tell you chapter and verse who it's happened to and
23 what the circumstances were.

24 Q Now, would I be correct that you did not indicate on
25 your application that you had been involved in an incident of

1 selling to an underage person?

2 A The Department has a history of all of our
3 deficiencies, all of our inspections, all of our audits. And
4 plus this was a separate entity. So not only did I not think
5 it was needed because they already had that information, but
6 it really wasn't applicable, because Henderson was not
7 applying for licenses.

8 Q Okay. So you did not put it on any of the eight NOR
9 applications?

10 A The State already had the information.

11 Q The answer to my question is you did not put it on
12 the applications.

13 A We did not put Henderson's incident on this
14 application.

15 Q And the reason you didn't do it is because it was
16 already in the State computer systems?

17 A No. The reason we didn't do it is because it wasn't
18 applicable. I mean, why would we put incidents from -- that
19 happened at a different company on NOR's application?

20 Q So you think the actual compliance history of an
21 applicant is not relevant, but the care, quality, and
22 procedure plan it submits is relevant. That's what you're
23 telling me?

24 A That's not what I'm saying. No.

25 Q So the actual compliance history is relevant to the

1 application?

2 A The compliance history for NOR, although I don't
3 know that it was, you know, structured this way in the
4 application, I think would be relevant. But, again, you're
5 asking me about an incident that occurred at a separate
6 company.

7 Q Okay. And isn't it true that you asked the State to
8 scrub this from its computer systems?

9 A No.

10 MR. KEMP: Shane, can I see the next on this,
11 please.

12 THE COURT: And what's its exhibit number, or is it
13 still part of --

14 MR. KEMP: Same exhibit.

15 THE COURT: Okay. Thank you.

16 MR. KEMP: Same exhibit, Your Honor, 96.

17 BY MR. KEMP:

18 Q "Please remove the investigation SODs," that's
19 statement of deficiencies; right?

20 A Correct.

21 Q Please remove them. So the State was asked to
22 remove these from its system; right?

23 A I'm not familiar with this email. I don't know the
24 history behind it.

25 Q And you don't know what your attorney asked the

1 State to do?

2 MR. KOCH: Objection. Lacks foundation.

3 Argumentative.

4 THE COURT: Overruled.

5 THE WITNESS: I know that --

6 MR. KOCH: Misstates the document.

7 THE COURT: Overruled.

8 THE WITNESS: I know that we discovered that this
9 incident occurred and that we voluntarily went to the State
10 and told them that it happened, provided a plan of correction,
11 and so on. So --

12 BY MR. KEMP:

13 Q You discovered it when the mother called complaining
14 that her son had been able to buy marijuana at the State, or
15 you discovered it how?

16 A I don't recall that's how it occurred. We have a
17 full-time internal compliance person whose job it is to ensure
18 that we're following the rules. And I believe that he
19 discovered this incident and then escalated it through the
20 proper channels of management, again, at Henderson Organic
21 Remedies.

22 Q Did you think this is something that the graders
23 should have had to consider, your actual compliance history,
24 as opposed to the theoretical compliance history in the plan
25 documents you submitted?

1 MR. KOCH: Objection. Asked and answered.
2 Argumentative.

3 THE COURT: Overruled.

4 THE WITNESS: So, again, this was for -- this had
5 not happened with the applicant. So this was a separate
6 entity. And secondly, that wasn't part of the application, so
7 we did not submit it. If it had been part of the
8 requirements, we would have gladly provided that information.

9 BY MR. KEMP:

10 Q A separate entity with the same, what was your word,
11 admirable, wonderful management that both entities had; right?
12 NOR and HOR had the same management, same executives?

13 A Yes. Similar. Some common ownership.

14 Q Okay. And isn't the reason that HOR didn't apply
15 for an application was because it was concerned that this
16 incident would hurt it?

17 A Not at all. That's not at all why.

18 MR. KEMP: Thank you, sir.

19 THE COURT: Mr. Cristalli.

20 MR. CRISTALLI: Thank you, Your Honor.

21 CROSS-EXAMINATION

22 BY MR. CRISTALLI:

23 Q 'Afternoon, Mr. Jolley.

24 A 'Afternoon.

25 Q Mr. Jolley, you talked a little bit about you being

1 familiar with the ballot initiative; correct?

2 A Yes.

3 Q And in fact NRS 453D.020 discusses a little bit
4 about the ballot initiative in terms of its introduction.
5 Specifically it talks about "In the interest of public health
6 and public safety and in order to better focus the State and
7 local law enforcement resources on crimes involving violence
8 and personal property the people of the state of Nevada find
9 and declare that the use of marijuana should be legal for
10 persons 21 years of age or older, and its cultivation and sale
11 should be regulated similar to other legal business." You
12 agree with me that that's what the provision says?

13 A Yes.

14 Q Okay. It continues on to say, "The people of the
15 state of Nevada find and declare that the cultivation and sale
16 of marijuana should be taken from the domain of criminals and
17 be regulated under a controlled system where businesses will
18 be taxed and the revenue will be dedicated to public education
19 and enforcement of the regulations of this chapter." You
20 agree with that, sir, don't you?

21 A Yes. That's what it says.

22 Q That's what it says.

23 A Yep.

24 Q And it says that because the initiative addresses
25 the issue and then through the course of the statute to make

1 sure that there are no criminals that are operating marijuana
2 establishments in the state of Nevada. You'd agree with me;
3 correct?

4 A I believe the State undertakes steps by declaring
5 background checks and so forth to make sure that the people
6 who are working in the industry meet certain requirements,
7 yes.

8 Q In fact, under 453D.200(6) -- Court's indulgence --
9 it specifically says, "The Department shall conduct a
10 background check of each respective owner, officer, and board
11 member of a marijuana establishment license application";
12 correct?

13 A I believe so.

14 Q Want to make sure that we properly vet all
15 applicants to make sure that their backgrounds are clean;
16 correct?

17 A I believe that's the intention.

18 Q Okay. And then it goes on to 453D.205(1) stating,
19 "When conducting a background check pursuant to subsection (6)
20 of NRS 453D.200 the Department may require each respective
21 owner, officer, and board member of a marijuana establishment
22 license application to submit a complete set of fingerprints
23 and written permission authorizing the Department to forward
24 the fingerprints to the Central Repository for the Nevada
25 Records of Criminal History for submission to the Federal

1 Bureau of Investigation for its report"; correct?

2 A That's what it says.

3 Q So we want to make sure that all applicants are
4 appropriately vetted before licensing a particular applicant;
5 correct?

6 A I believe so.

7 Q And then 453D.210(5)(f)(1) says, "The persons who
8 are proposed to be owners, officers, or board members of the
9 proposed marijuana establishment have not been convicted of an
10 excluded felony." Isn't that true?

11 A That's what it says.

12 Q Okay. And the ballot initiative requires all
13 ownership to be disclosed; correct?

14 A I mean, we talked earlier about, you know, how
15 that's handled for publicly traded companies. But, yes, I
16 believe that that language is correct.

17 Q Okay. So let's talk about that with regard to how
18 it's dealt with with publicly traded companies. You would
19 agree with me, would you not, sir, that if you are a
20 shareholder of a company that you have an ownership interest?
21 Correct?

22 A Yes, I would agree with that.

23 Q So to take it to its logical conclusion, then, if
24 the ballot initiative, if the NRS requires the disclosure of
25 all, and it says "shall," all ownership interests in a

1 marijuana establishment, you would agree with me, sir, that it
2 would be difficult in light of the fact that all shareholders
3 are considered owners to make that full disclosure; correct?

4 MR. KOCH: Objection. Legal conclusion.

5 THE COURT: Overruled.

6 THE WITNESS: I think when this language was drafted
7 I don't know that it really considered the implications for
8 publicly traded entities. But there are many now, you know,
9 companies that are publicly traded. And so I believe that in
10 a case where you have, you know, ambiguity the Department has
11 been able to clarify the rules for handling those situations.

12 BY MR. CRISTALLI:

13 Q Okay. So the ballot initiative says "shall be
14 disclosed"; correct?

15 A Yes.

16 Q And the regulations say "shall be disclosed";
17 correct?

18 A I believe so.

19 Q So it's your testimony here that the Department of
20 Taxation could usurp both the initiative and the regulations
21 in order to justify nondisclosure?

22 A I would say clarify.

23 MR. KOCH: Objection. Legal conclusion and
24 argumentative.

25 THE COURT: Overruled.

1 THE WITNESS: I would say clarify.

2 BY MR. CRISTALLI:

3 Q Mr. Kemp talked to you a little bit about locations.
4 And I think he's established pretty clearly that both the NRS
5 453D.210(5)(b) and NAC 453D.268 require a physical address
6 where the proposed marijuana establishment will be located and
7 a physical address of any co-owned or otherwise affiliated
8 marijuana establishment is. You agree with both -- the fact
9 that both the NRS and the regulations say that; correct?

10 A I believe so. I didn't read what you just read, but
11 that sounds -- sounds to be accurate.

12 Q Okay. And now going to the application --

13 MR. CRISTALLI: Shane, can you put up Exhibit 5.

14 BY MR. CRISTALLI:

15 Q Let's go to page 8 first, because it pops up as the
16 first reference I'll make. Middle of the sentence in red it
17 says, "No applicant may be awarded more than one retail store
18 license in a jurisdiction/locality unless is less applicants
19 than licenses allowed in the jurisdiction." That's correct;
20 right? That's what it says?

21 A That's what it says.

22 Q Okay. And that's what you abided by. You followed
23 that; correct?

24 A We only submitted one application per jurisdiction.

25 Q Okay. And Mr. Kemp addressed this with you, but he

1 didn't address who had applied for multiple licenses in the
2 same jurisdictions under different LLCs and were awarded those
3 licenses. Are you familiar with the fact that both Essence
4 and Thrive were awarded two licenses in on jurisdiction that
5 they applied in under different LLCs under the same
6 organizational structure?

7 A I have heard that.

8 Q But your company did not do that?

9 A That's correct.

10 MR. CRISTALLI: Okay. Let's go to Attachment A,
11 Shane, if we could, on that same exhibit. That's on page 21.
12 BY MR. CRISTALLI:

13 Q If you look at where it starts "Marijuana
14 establishment's proposed physical address if the applicant
15 owns property or has secured a lease or other property
16 agreement. This must be a Nevada address and cannot be a P.O.
17 box." That says that; correct?

18 A There's part of that that you read that I didn't see
19 on the screen here.

20 UNIDENTIFIED SPEAKER: Are you talking about 5A?

21 MR. CRISTALLI: Yes.

22 UNIDENTIFIED SPEAKER: It's the wrong form.

23 MR. CRISTALLI: Oh, that's okay. You could leave
24 that -- okay. We'll go back to that, then. Is that it?

25 MR. CRISTALLI: May I approach, Your Honor, so I can

1 see?

2 THE COURT: You may.

3 And, sir, if it's not clear on your screen or it's
4 centered, let us know, and we'll try getting it for you.

5 BY MR. CRISTALLI:

6 Q So this particular exhibit requires a physical --
7 I'm sorry. This particular Attachment A requires a physical
8 address, doesn't it?

9 A I mean, it has a field for a proposed physical
10 address. This doesn't, you know, indicate the scoring for
11 locations.

12 Q Okay. Well, let's agree that's [inaudible]. It
13 says, "Marijuana establishment's proposed physical address.
14 This must be a Nevada address and cannot be a P.O. box";
15 correct?

16 A Yes.

17 Q That's what it says; right? Right?

18 A Yes.

19 Q And that's not the application that your company
20 Nevada Organic Remedies filled out, is it?

21 A I'm not sure.

22 Q Well --

23 A Is this the previous draft, or the final draft?

24 Q You tell me.

25 A Yeah. I don't know. So I can only go with what's

1 on the screen. I can't tell you by looking at this if this
2 was the one we actually submitted or not.

3 MR. CRISTALLI: Okay. Shane, can you pull up the
4 other one on page 21. We can look at them both now.

5 BY MR. CRISTALLI:

6 Q This particular Attachment A says, "Marijuana
7 establishment's proposed physical address if the applicant
8 owns property or has secured a lease or other property
9 agreement. This must be a Nevada address and cannot be a P.O.
10 box." Is that what it says?

11 A Yes.

12 Q That's different than the previous Attachment A that
13 you looked at; correct?

14 A Yes.

15 Q Okay. The first one required the physical address,
16 the second one required a physical address if the applicant
17 owns the property or has secured a lease; correct?

18 A Right. Yes.

19 Q But under both of these you can't have a P.O. box;
20 right?

21 A That's what it says.

22 MR. CRISTALLI: Okay. Shane, can you go to --

23 Your Honor, this is a demonstrative. It is part of
24 the disclosures that was provided to us from the State and
25 that we just received.

1 THE COURT: And why is it demonstrative, then?

2 MR. CRISTALLI: Well, because I don't have a hard
3 copy of it, and I can't mark it as an exhibit or introduce it.
4 I have it on my screen, and Shane has it on his screen.

5 THE COURT: Does anybody know what Mr. Cristalli's
6 talking about?

7 They all say, no, they don't have any idea what
8 you're talking about. Can you give us a number of the
9 document?

10 MR. CRISTALLI: Yes. It is DOT041835.

11 THE COURT: Does anybody know that document?

12 MR. KOCH: Know the one before it, but that's it.
13 Can you just tell us what it is and we can maybe --

14 MR. CRISTALLI: It is the -- let's see here. It's
15 called Recreational Application Period. It lists the RD
16 numbers, it lists the applicants, the address where the
17 applicants are submitting applications in, the county, local
18 jurisdiction --

19 THE COURT: Perhaps you can carry your laptop over
20 there and show them. And then maybe they will be familiar
21 with the document and we can move on.

22 So how are you going to get me a hard copy if you
23 use it as a demonstrative?

24 MR. CRISTALLI: Well, at this very moment it's --

25 THE COURT: No. That would be tomorrow.

1 MR. CRISTALLI: Yes.

2 THE COURT: You'd bring it?

3 MR. CRISTALLI: Yes.

4 THE COURT: Okay. Since it looks a lot like real
5 evidence, I'm going to try and work with you.

6 MR. SHEVORSKI: Yeah, it's our document.

7 THE COURT: It's a Department of Taxation document,
8 because it says DOT on it.

9 MR. SHEVORSKI: Correct, Your Honor.

10 THE COURT: I gathered that all by myself.

11 MR. KOCH: You're not submitting it into evidence?
12 You're just going to use it as a demonstrative.

13 MR. CRISTALLI: No.

14 MR. KOCH: Go ahead.

15 THE COURT: They're going to use it demonstratively.
16 Any objection? Everybody says they're okay with that
17 procedure, Mr. Cristalli, on the condition you bring me an
18 exemplar tomorrow for Dulce to mark as Demonstrative next in
19 order.

20 MR. CRISTALLI: Yes, Your Honor, I will do that.

21 THE COURT: She's going to leave a space.

22 MR. CRISTALLI: Shane, DOT041835.

23 BY MR. CRISTALLI:

24 Q And if you go down specifically to Nevada Organic
25 Remedies LLC, you'll see an address of 5130 South Fort Apache

1 Road, Suite 215 through 145, Las Vegas, Nevada. Is that what
2 it says?

3 A Yeah, I believe so. Kind of hard to read.

4 MR. CRISTALLI: And then, Shane, if you'd go down to
5 RD329.

6 BY MR. CRISTALLI:

7 Q You see RD329?

8 A RD329, Commerce Park Medical LLC. Yes.

9 Q And the address is listed at 5130 South Fort Apache
10 Road, Suite 215 to 155, Las Vegas, Nevada; correct?

11 A Uh-huh. Yes.

12 Q It's the same address as the address that you use in
13 your application, isn't it?

14 A I believe so.

15 MR. CRISTALLI: Okay. Shane, can we go to 316 --

16 BY MR. CRISTALLI:

17 Q And that, by the way -- do you understand Commerce
18 Park Medical to be known as doing business as Thrive?

19 A I'm not familiar with that entity name, but it
20 should be Thrive. I don't know.

21 MR. CRISTALLI: Okay. Can you go down, Shane, to
22 316.

23 UNIDENTIFIED SPEAKER: Actually, isn't it directly
24 on the page?

25 MR. CRISTALLI: I'm sorry? DOT041840.

1 BY MR. CRISTALLI:

2 Q Do you see RD316?

3 A Yes.

4 Q It has Essence Tropicana LLC?

5 A Uh-huh.

6 Q And it has 5130 South Fort Apache Road, Suite 215
7 through 147, Las Vegas, Nevada.

8 A Yes, I see that.

9 Q Same address; correct?

10 A I see that.

11 MR. CRISTALLI: And, Shane, if we could go to 263,
12 RD.

13 BY MR. CRISTALLI:

14 Q Do you see that RD263?

15 A Yes.

16 Q And that's Cheyenne Medical?

17 A Yes.

18 Q And that also uses the same address as 5130 South
19 Fort Apache Road, Suite 215 through 156, Las Vegas, Nevada
20 89148; correct?

21 A So the street address is the same, the 5130 South
22 Fort Apache.

23 Q And the suites are different; correct?

24 A I believe so, yeah.

25 Q The address is the same?

1 A The street address appears to be the same.

2 Q Correct. The street addresses are all --

3 A Different suites.

4 Q Correct. The street address for all those locations
5 are the same -- I'm sorry.

6 A The suite address?

7 Q The physical addresses are the same, the suites are
8 different; correct?

9 A I believe so.

10 Q Okay. And do you recognize Cheyenne Medical as
11 Thrive?

12 A I don't. I don't know what LLC that is.

13 Q Okay. And once again, the application says that you
14 cannot use P.O. boxes; correct?

15 A Correct.

16 Q And as Mr. Kemp had indicated to you, it would be
17 very difficult if you go through the applications specific to
18 building floor plans, community impact, security as it relates
19 to the building in the particular location that that building
20 is situated to have the exact same specifications for each
21 building you put in each jurisdiction; true?

22 A That's correct. The Department designed the
23 application process to be kind of more generic by virtue of
24 submitting one application for multiple jurisdictions. That's
25 how it was designed from the very beginning, yes.

1 Q So there would certainly be some variations with
2 regard to those specifications depending on the jurisdictions
3 that you applied in; right?

4 A Well, depending on the physical building itself and
5 other -- sometimes jurisdictions have their own requirements
6 that could affect the floor plan, as well.

7 Q Okay. So you, because of how you interpreted the
8 application to be, did not have to go out and secure a
9 location; correct?

10 A We had to provide an address in that jurisdiction.

11 Q You did not have to secure, I'm sorry, a letter of
12 intent; right?

13 A We did not secure a letter of intent.

14 Q You did not have to go secure a purchase agreement,
15 correct, or secure a piece of real property?

16 A Yeah. Because the location wasn't a graded section
17 and the Department said we didn't have to secure a location,
18 we did not go out and sign a lease.

19 Q Okay. But you would agree with me, sir, would you
20 not, that the statute does require a location; correct?

21 A Statute requires a location that meets the
22 separation requirements, et cetera. But for purposes of this
23 application the Department indicated in its rightful authority
24 that you did not need to secure a location given all the
25 problems that had happened in 2014.

1 Q Well, that was -- that was what you interpreted the
2 Department requiring. But there was other applicants that
3 were participating in this competition with you that were
4 under the impression that they in fact had to go secure
5 letters of intent, that they had to go purchase a real
6 property in order to secure a location for the purposes of the
7 application; correct?

8 A They should have clarified that before wasting all
9 that energy and money securing locations. But it's clear to
10 the vast majority of people who were paying attention what the
11 rules were. And the rules were you didn't have to have a
12 lease, you didn't have to own a building. You simply had to
13 provide an address that was within that jurisdiction that did
14 not have a P.O. box, you know, in the --

15 Q Sir, I showed you two different applications, and we
16 compared them; correct?

17 A Yes.

18 Q And those two applications had different information
19 in them with regard to the requirement of a property address,
20 did they not?

21 A They had different information, but there's only one
22 applicable application. The Department didn't issue two
23 applications and say, pick the one you like and submit it.
24 One appears to be a previous draft, whereas there was only one
25 application that was applicable to the period.

1 Q So if they were both on the Department of Taxation
2 Website and the applicants had I guess an opportunity to
3 choose either one, depending on I guess what day it was when
4 they went on to download their application, there could be a
5 mixup in terms of what application would be required in terms
6 -- in regard to filing for this period; correct?

7 A If the applicant wasn't being careful and wasn't
8 following the rules and taking necessary steps to ensure that
9 they were using the right form, I could see how that could
10 potentially happen. But -- I didn't --

11 Q But, sir --

12 A I'm not finished. But, you know, I spoke with a
13 number of applicants and I don't think it would be fair to say
14 that there was some general confusion at this time. There was
15 a previous draft of the application, and there was the real
16 application.

17 Q And the contents of the application required very
18 specific information with regard to building, though, didn't
19 it?

20 A With regard to like a floor plan? Is that what
21 you're asking?

22 Q It required a floor plan; correct?

23 A Uh-huh. Yes.

24 Q It required a budget; right?

25 A Yes.

1 Q It required information specific to community
2 impact; right?

3 A Yes.

4 Q It required information with regard to security
5 plans; correct?

6 A Correct.

7 Q And the application said very specifically to be as
8 specific as you could with regard to those requirements.

9 A I'm not aware of that language off the top of my
10 head.

11 Q And you said that some applicants -- the majority of
12 applicants knew what application to use. That's what you
13 said; right?

14 A Again, you know, given my involvement in the
15 industry, my position and my day-to-day, I was in frequent and
16 constant interaction with many members of the industry, and I
17 think if there was widespread confusion about the location, I
18 would have known about it. It was actually quite the
19 opposite. The discussion that I heard and observed was more
20 of a sigh of relief that the locations were not required this
21 time given all the headaches and problems that resulted from
22 the 2014 application period. And --

23 Q Well --

24 A I'm not finished. Please let me finish. We have
25 monthly meetings in the NDA. I mean, we have these

1 conversations about what's going on in the industry and what
2 the Department's up to almost every month. There's
3 occasionally a month where we don't. And not only that, but
4 just the ongoing dialogue among, you know, owners and members
5 and managers and stuff I -- you know, I just don't think that
6 there was -- there was definitely discussion about it, but,
7 like I said, it was more of a relief that we didn't have to
8 secure locations. So were there isolated cases where people
9 were confused by the location requirement and maybe they
10 hadn't taken the time to look at the most up-to-date
11 application, yeah, that's very possible. But I don't think
12 it was a widespread issue in my experience.

13 Q Okay, sir. You don't know for a fact as to the
14 percentage of applicants who knew that they did not have to
15 submit a property location and others who thought that they
16 did; correct? You don't know for certain?

17 A I mean, I have a general -- I have a general sense
18 for that just because of my --

19 Q Sir, I'm just asking you a yes or no question.

20 THE COURT: You've got to let him finish. I know
21 you may be answering [sic] yes or no, but he doesn't have a
22 tendency to answer that way.

23 MR. CRISTALLI: Yes, Your Honor.

24 THE WITNESS: It's intentional. I'm just trying
25 to be accurate in my responses. I apologize if it comes

1 across --

2 BY MR. CRISTALLI:

3 Q You know that -- in fact, Mr. Kemp discussed his
4 client with you, MM, and the fact that they had an operating
5 dispensary or a dispensary that was operational for their
6 proposed site, so certainly their company wasn't one of the
7 ones that didn't think that they didn't have to submit a
8 property location; correct?

9 MR. KOCH: Objection. Speculation.

10 THE COURT: Overruled.

11 THE WITNESS: I can't speculate about their frame of
12 mind. I know that they made a strategic decision to abandon
13 their location and go after the tourist market at Planet 13.
14 In fact, their initial strategy was to bifurcate medical and
15 rec, and they made a commitment to the tourist location
16 without even getting permission to bifurcate. And then they
17 later found out that they couldn't do that, and so they ended
18 up moving their medical and their retail license to the Planet
19 13 location, abandoning the Decatur and Sunset location.

20 So, again, you know, I don't know what they were
21 thinking at the time, but I do not believe there was mass
22 confusion about this location thing. If anything, there was a
23 collective sense of relief that leases were not required this
24 go around.

25 //

1 BY MR. CRISTALLI:

2 Q Do you know who Dave Thomas is?

3 A Yes.

4 Q Do you know what company he owns?

5 A I believe he's a partner in Shango.

6 Q Okay. And do you realize that Dave Thomas got up
7 here and testified that he was unaware that he did not have to
8 put forward a property location or secure -- I'm sorry, secure
9 a property location with a letter of intent or purchase
10 agreement?

11 A I can't speak to his level of commitment or
12 understanding or familiarity with the process.

13 Q Okay. And his testimony further was that he used
14 the application that required a letter of intent or to secure
15 a property, in fact spent money, spent quite a bit of money to
16 secure those properties.

17 A I'm not familiar with his situation. I never had
18 that conversation with him.

19 Q You familiar with Mike Villeon?

20 A No, not really. Just by name.

21 Q Mike Villeon also testified that he believed that he
22 was required to secure a letter of intent and a -- letter of
23 intent or property in order to go forward with this
24 application process.

25 A So there's a pattern of unsuccessful applicants

1 using the wrong form, okay.

2 Q Okay. So you define it as the wrong form. Let's
3 discuss that again. There were two forms on the Department of
4 Taxation Website. You're identifying it's the wrong form,
5 sir, because you in fact used the form that did not require a
6 -- require you to secure a letter of intent or to actually
7 purchase the property.

8 A Look, there was only one form. The Department made
9 changes to the form. I believe they sent an email outlining
10 what those changes were in great detail. And for anyone who
11 was paying should have been aware of that. I can't -- I
12 cannot explain why people used the wrong form. I think that's
13 actually a pretty good indication that they're not detail
14 oriented and probably would be unsuccessful in a competitive
15 application process.

16 Q Sir, was this a guessing game to try to figure out
17 what form to use in order to be successful with the
18 application? If you are an applicant that is --

19 THE COURT: Did you want him to answer that
20 question?

21 MR. CRISTALLI: I was going to --

22 THE COURT: That's a yes or no.

23 MR. CRISTALLI: I was going to follow up with it.
24 But yes.

25 THE WITNESS: I think I'm rubbing off on you.

1 Look, I'm an applicant, I'm not the State, okay. I
2 followed the rules. It was clear as day to me which
3 application to use. There was not one moment of confusion
4 among my team, myself, our in-house counsel, our outside
5 counsel, anyone on our team. So if some groups used the wrong
6 version of the form despite the updates that were sent out by
7 the State, you know, I can't explain that. But -- nor is it
8 my job. I can just tell you from my experience it was -- it
9 was common sense, it was not a point of confusion. And if it
10 was some widespread pandemonium, I would have heard about it
11 as the president of the NDA. And I didn't hear about it. The
12 conversation that I heard and that I was involved in was,
13 again, actually the opposite. It was, who, we are very happy
14 that the State isn't requiring a location this go around. So
15 it's quite the opposite of the picture you're trying to paint.

16 BY MR. CRISTALLI:

17 Q Okay. And that's because the people that you were
18 dealing with, your consultants -- you testified you had
19 consultants; correct?

20 A Yeah. But that's not who I was referring to in my
21 previous statement.

22 Q Did you have consultants?

23 A Yes.

24 Q Okay. Who were they?

25 A Amanda Connor is our legal counsel. We had a

1 technical writer that we consulted with who helped review the
2 content that we were writing and provide feedback, we had
3 architect who would help with plans and some other things
4 regarding the building. I'm trying to think what other
5 consultants we may have had. Probably the big ones. But, you
6 know, most of the work we did ourselves internally working
7 with our counsel.

8 Q And the information that you were receiving with
9 regard to your requirement to just put an address in for your
10 jurisdictions that you were applying to came from your legal
11 counsel?

12 A It was a combination of our legal counsel and our
13 own internal team's interpretation of the rules and of the
14 application.

15 Q Well, it was your team getting information from the
16 Department of Taxation with regard to what was required in the
17 applications?

18 A Yes, that's correct.

19 Q Okay. So the Department of Taxation didn't
20 necessarily communicate the same information you were getting
21 to all the applicants.

22 A Oh. No. I'm sorry. Let me clarify that. We were
23 receiving Listservs. For example, if I remember correctly, I
24 could be wrong in this, but I believe there was an email that
25 the Department sent out clarifying the changes that had been

1 made to the application form. I would have to go back and,
2 you know, kind of refresh my memory, but I believe that that
3 was clearly articulated, including the change to the address
4 and some other changes to application form.

5 Q Okay. Now --

6 THE COURT: Mr. Cristalli, is this a lovely place to
7 take a short afternoon break?

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

9 THE COURT: All right. We're going to take 10
10 minutes.

11 (Court recessed at 3:43 p.m., until 3:50 p.m.)

12 THE COURT: Let's see if we can power through, guys.
13 We've got another 45 minutes, 50 minutes.

14 Mr. Cristalli.

15 MR. KEMP: Judge, as a procedural thing we talked to
16 the State, okay, and we have our findings of fact done, but
17 they're a real mess. Could we have a couple more days to
18 clean up the mess?

19 THE COURT: I asked my staff when I got here this
20 morning, I said, did we anything from those guys; no.

21 MR. CRISTALLI: They're due today.

22 MR. KOCH: I've got a set we'll send to you, a draft
23 set.

24 THE COURT: I would prefer them to be cleaned up.

25 MR. KEMP: How about Friday at 5:00, Your Honor?

1 THE COURT: How about Thursday.

2 MR. KEMP: Thursday's fine.

3 THE COURT: Because if you give them to me Friday at
4 5:00 I won't get to see them, because by the time people get
5 them put in the system and everything it will be too late for
6 them to get them to me.

7 MR. SHEVORSKI: Real quick on the pocket brief, Your
8 Honor. Do you want that publicly filed, do you want it email
9 with everyone cc-ed? How do you want it?

10 THE COURT: It's usually publicly filed,
11 distributed, and I would love a copy sent to my law clerk.

12 MR. SHEVORSKI: Absolutely.

13 THE COURT: And remember your phrase you're looking
14 for; right? Do you know the phrase you're looking for? You
15 are looking for the one that is green on my notes, "necessary
16 or convenient" is the phrase.

17 MR. SHEVORSKI: I do know the phrase, Your Honor.

18 MR. GENTILE: Your Honor, we I believe have filed
19 ours.

20 THE COURT: When?

21 MR. GENTILE: Hour or two ago, according to my
22 office.

23 THE COURT: Okay. Because I haven't seen it. I've
24 been asking.

25 MR. GENTILE: It is not what you would call a pocket

1 brief, however.

2 THE COURT: So it's not less than five pages?

3 MR. GENTILE: Maybe a pocketbook brief.

4 MR. KOCH: The entire bookcase, Your Honor.

5 MR. SHEVORSKI: I think it was like 150.

6 THE COURT: I don't know that it's carry-on size.

7 MR. GENTILE: It really couldn't be done -- to my

8 way of thinking, and I wrote it, it really couldn't be done as

9 a pocket brief.

10 THE COURT: Mr. Gentile, I don't care how long it

11 is.

12 MR. GENTILE: Okay. Good.

13 THE COURT: I used the term "pocket brief" because

14 that's when I was a young lawyer what they called those things

15 you pulled out in the middle of trial sort of like the ambush.

16 MR. GENTILE: Right.

17 THE COURT: Because it didn't used to have to be

18 served back then.

19 MR. SHEVORSKI: We followed the Byron White method,

20 Your Honor, under 10 pages.

21 THE COURT: Okay. Mr. Cristalli, can you finish

22 now.

23 MR. CRISTALLI: Yes, Your Honor.

24 THE COURT: That'd be lovely.

25 //

1 BY MR. CRISTALLI:

2 Q Okay. Mr. Jolley, just to kind of summarize where
3 we were, it's your testimony that based on your information
4 you obtained through your representative, specifically Amanda
5 Connor, that you weren't required to submit letters of intent
6 or purchase agreements with regard to jurisdictions; correct?

7 A That's not what I --

8 MR. KOCH: Objection. Attorney-client
9 communication.

10 THE COURT: Overruled.

11 THE WITNESS: That's not what I said.

12 THE COURT: He's been talking about it all
13 afternoon.

14 MR. KOCH: About the whole team, but --

15 BY MR. CRISTALLI:

16 Q Well, based on information from your team you didn't
17 have to secure letters of intent or real property; correct?

18 A I would say that based on information from the
19 Department itself my team and I and our counsel concluded that
20 we did not need to secure locations for our application.

21 Q And that was based on information received from the
22 Department of Taxation; correct?

23 A Yes.

24 Q And you talked a little bit about Listserv; right?

25 A Yes.

1 Q A Listserv where information went out to marijuana
2 establishment licensees; correct?

3 A Among others.

4 Q Okay. You're aware, sir, are you not, that there
5 were five different Listservs with regard to communications of
6 Department of Taxation to marijuana establishment licensees?

7 A I'm generally familiar that there are multiple
8 different Listservs. I'm not -- I was not aware of number.
9 But, yes, I am aware that they're different.

10 Q And that there were significant issues with regard
11 to confusion amongst the marijuana establishment licensees
12 with regard to communications they were or were not receiving
13 from the Department of Taxation?

14 A During my three years as president of the NDA and
15 previous to that a board member I never heard that.

16 Q Okay. And you were previously in real estate?

17 A Still am, yes.

18 Q Okay. And what do you do in real estate?

19 A Own, manage, and develop commercial real estate
20 properties.

21 Q Have you ever been involved in a bidding process
22 with regard to real estate, real property?

23 A Bidding process?

24 Q Yeah. Competitive --

25 A Like a foreclosure auction or something?

1 Q Yes. Sure.

2 A Yes.

3 Q And you rely on information in order to be
4 competitive in that bidding process, I would assume. Correct?

5 A Yes. We would conduct due diligence and determine
6 what we think is the, you know, if you want to call it the
7 fair market value, and then what we're willing to bid,
8 something like that.

9 Q And sometimes the only due diligence you could do is
10 with regard to the information you were receiving from the
11 Department of -- for example, from whatever -- strike that.

12 Going back to the issue of the Department of
13 Taxation, in order to do your due diligence, get information
14 as an applicant you would have to rely on the information that
15 you obtained from the Department of Taxation; correct?

16 A I think the information that comes from the
17 Department is very important to take into consideration when
18 applying, yeah.

19 Q So to that point, if your team didn't receive the
20 information with regard to location, for example, or maybe
21 other criteria, like diversity, as Mr. Kemp had referenced
22 when he was talking to you, that applicant would be at a
23 disadvantage compared to an applicant who had that
24 information. Would you agree with me?

25 A Well, I mean, you had to get the application

1 somehow, so the claim that you received the first draft of the
2 application but not the second would raise a number of
3 questions in my mind, much more likely to be kind of
4 recreating history, rather than being included in one Listserv
5 and excluded from another. To me the much more likely
6 scenario is a post facto reconstruction of the facts to create
7 the appearance of ignorance --

8 Q Well --

9 A -- when in likelihood in my experience the
10 communication was free flowing from the Department regarding
11 the application process. I did not hear any, you know,
12 widespread confusion about people not receiving the
13 communications. And, granted, this was at a time when
14 everybody knew the applications were coming. So we were all
15 ready to start and to get this information. And so to say
16 that, oh, we didn't get it, or, we got the wrong one, to me
17 would indicate, you know, that that individual may not really
18 be as involved in the industry as you might think.

19 Q So it's your testimony, then, if a applicant
20 submitted an application that required a letter of intent or a
21 purchase agreement that that particular applicant was
22 ignorant? That's your testimony?

23 A I can speculate as to why they did not receive the
24 real application. All I can do to try to answer your question
25 is to come up with rationale for why perhaps they were

1 confused. But, as I said earlier, I wasn't confused, our team
2 wasn't confused, our attorneys weren't confused. It seemed
3 very clear the correct way to submit applications, and that's
4 what we did.

5 Q And you weren't confused because you received
6 information from the Department of Taxation as it related to
7 what you needed to include in the application regarding
8 locations and jurisdictions; correct?

9 A Yes. Combined with our own kind of knowledge of,
10 you know, the process and so forth, yes.

11 Q Okay. But if one did not receive that information
12 from the Department of Taxation and was relying on the
13 statute, was relying on the regulation, relying on the
14 substance of the application, and used the application that
15 was on the Department of Taxation Website that in fact
16 required location -- letters of intent or real property, then
17 that person would be ignorant. Is that what you're saying?

18 A I just find it very hard to kind of come up with
19 this hypothetical scenario that you're trying to paint. I
20 mean, for people who are in the industry and involved in the
21 operations and know what's going on I just find it hard to
22 believe that they went through this enormous, I mean,
23 hundreds, or thousands in our case, of hours, hundreds of
24 thousands of dollars using the wrong form. That to me seems
25 very, very unlikely given what was at stake at the time and

1 how important these applications were.

2 Q Okay. You keep referencing it as the wrong form,
3 sir; is that correct?

4 A Yes.

5 Q Is that what the Department of Taxation told you,
6 that it was the wrong form?

7 A No, they did not. That's my term. I believe
8 that --

9 Q So that's your interpretation of it.

10 A Look, the day the application period opened there
11 was one form that was the form. Not previous drafts.

12 Q So how do you know that? How do you know that the
13 other application was not on the Department of Taxation
14 Website? How do you know that other applicants weren't using
15 a different application form?

16 A I don't know that other people were not using
17 another form. But there was zero confusion on our team, and I
18 heard nothing from anyone else in the industry to indicate
19 that there was confusion. So, you know, I just don't see how
20 that could have -- this widespread confusion would have taken
21 place without me knowing about it.

22 MR. CRISTALLI: Okay. Shane, could you pull up
23 Exhibit 220. Specifically RD215.

24 BY MR. CRISTALLI:

25 Q Mr. Jolley, can you identify RD215 through 222 as

1 Nevada Organic Remedies' criteria sheet?

2 A I believe so. I'd have to reference the earlier
3 exhibits, but I think that rings a bell.

4 THE COURT: What is the exhibit number?

5 MR. CRISTALLI: 220, Your Honor.

6 THE CLERK: Is that Serenity 44 through 367?

7 MR. CRISTALLI: Yes, it is.

8 BY MR. CRISTALLI:

9 Q Do you have that in front of you?

10 A What are you referring to? I'm sorry.

11 Q Criteria -- sorry, "Tally Sheet Criteria 3." It's
12 the identified portion of your application RD215 through 222.

13 A Okay.

14 Q In that --

15 MR. KOCH: Are you asking for the identified or the
16 non-identified?

17 MR. CRISTALLI: This is the identified.

18 MR. KOCH: So I think we've got the wrong document
19 up.

20 MR. CRISTALLI: I'm sorry. It is 221.

21 THE CLERK: Proposed.

22 THE COURT: Is it only proposed?

23 MR. CRISTALLI: Any objection?

24 MR. KOCH: No, none.

25 MR. CRISTALLI: Move for admission, Your Honor.

1 THE COURT: Be admitted.

2 (Plaintiffs' Exhibit 221 admitted)

3 BY MR. CRISTALLI:

4 Q You talked on direct examination -- I'm sorry, on
5 cross-examination with Mr. Kemp that the application -- well,
6 first of all, your application was approximately a thousand
7 pages. Is that what you testified to?

8 A I believe I said in excess of thousand.

9 Q In excess of a thousand pages. And you testified
10 that it was important from the Department of Taxation's
11 perspective that it was a blind point scoring; correct?

12 A I think I commented about the fact that it was set
13 up that way to have a certain portion of the application that
14 was non-identified, just like the medical applications in
15 2014.

16 Q Okay. And as it relates to the identified portion
17 of the application you submitted one application to the
18 Department of Taxation?

19 A That's correct.

20 Q Okay. And in this particular Tally Sheet Criteria 3
21 under the identified portion it talks about organizational
22 structure; correct?

23 A Yes.

24 Q It talks about financials; right?

25 A Yes.

1 Q And taxes and other beneficial contributions;
2 correct?

3 A Yes.

4 Q Okay. And in that scoring all the evaluators,
5 Evaluator 1, Evaluator 2, and Evaluator 3, all scored the same
6 scores for each of the criteria in that tally sheet; correct?

7 MR. KOCH: It was zoomed in on time, rather than
8 scores.

9 THE COURT: Better.

10 THE WITNESS: Can you please restate the question.

11 BY MR. CRISTALLI:

12 Q Okay. So, for example, if you go up to
13 Organizational Structure, where it says 60 points, under
14 Element 1, organizational chart points possible there were
15 15 points possible, and each evaluator allocated your company
16 15 points for that particular criteria; correct?

17 A I believe so. This is the first time I'm seeing
18 this. But --

19 Q That's what it says; right?

20 A -- that looks like it's -- they're all the same,
21 yeah.

22 Q Okay. So if you go to Element 2, which is previous
23 business experience, possible points 10, each evaluator
24 awarded your company 10 points; correct?

25 A Yes.

1 Q Element 3, each evaluator out of a possible 5 points
2 allocated 4 points to your company; correct?

3 A Yes.

4 Q And going down the remaining portion of that tally
5 sheet it appears that each evaluator gave the same score,
6 except for one variation that appears under Element 5,
7 diversity, where Evaluator 1 allocated -- I'm sorry.

8 Under Experience with MJ Nevada Evaluator 1
9 allocated 8 points, versus 7 points with regard to Evaluator 2
10 and 3; correct?

11 A Yes.

12 Q So essentially each one of these evaluators gave the
13 same score for this criteria sheet; correct?

14 A No.

15 Q Okay. Am I missing some of your numbers?

16 A Yeah. You just said it. One of them --

17 Q I said --

18 A -- got a different score than the other --

19 Q Okay. Excluding that.

20 A Excluding that?

21 Q 1 point difference.

22 A So one of the three evaluators gave a different
23 score than the other two.

24 Q For one of the criteria, specifically Element 4,
25 Experience With MJ in Nevada is the only deviation from all of

1 the other criteria in that particular score sheet. Would you
2 agree with me there, sir?

3 A I mean, I'm just looking at this for the first time,
4 so at face value, yes, it appears to be the case. But I --

5 Q Well, there's not too many numbers on that sheet. I
6 mean, you could take a minute to look at it, if you want. And
7 if you -- the question is, except, excluding that particular
8 difference, which is 1 point, all of the other scores are the
9 same, exact same; correct?

10 MR. KOCH: The document speaks for itself. Asked
11 and answered.

12 MR. CRISTALLI: I don't think he did, actually.

13 THE COURT: Overruled.

14 THE WITNESS: So there's three main sections here,
15 organizational structure, financial, and taxes and other
16 beneficial contributions. We maxed out on financial and
17 taxes. We got -- is that correct?

18 BY MR. CRISTALLI:

19 Q Let me --

20 THE COURT: You've got to let him finish his answer.

21 MR. CRISTALLI: Okay.

22 THE COURT: Were you finished, sir?

23 THE WITNESS: No. You know, I just wanted to point
24 out that it appears -- and, again, I'm just looking at this --
25 that we maxed out two of the three sections. So, yeah. One

1 of evaluators gave a different score on Section 4 or
2 organizational structure, yeah.

3 BY MR. CRISTALLI:

4 Q Can you find any other -- any other score except for
5 that where there's a difference in scoring on that criteria
6 sheet?

7 A Looking at this kind of spur of the moment, I
8 cannot.

9 Q Okay. And you agreed with me when you said that
10 blind scoring was important for the evaluating process;
11 correct?

12 A Well, that -- I believe that's the State's
13 intention, was to piggyback off of what was done in '14 by
14 having a significant portion of the application be non-
15 identified, not included, you know, names and other
16 identifiable information.

17 Q Well, sir, by having Evaluator 1, Evaluator 2, and
18 Evaluator 3, wouldn't you agree with me that the purpose of
19 having that is so that you can have a blind process or an
20 independent process with regard to reviewing applications?

21 MR. KOCH: Objection. Compound.

22 THE COURT: Overruled.

23 THE WITNESS: Yeah. I mean, so I guess, you know,
24 this is the identified portion; is that correct?

25 //

1 BY MR. CRISTALLI:

2 Q Yes. Correct.

3 A So, you know, seeing this for the first time, seems
4 like they had multiple scorers to ensure that there were not,
5 you know, major abnormalities and swings in the subjectiveness
6 of the scoring that was happening. So in that regard, again,
7 just looking at it for the first time, it appears that we're
8 very consistent in our scoring with these various evaluators.

9 Q Yeah. And the evaluators are very consistent, as
10 well, to being identical, aren't they?

11 A All I can go off of is the same numbers you're
12 looking at. I can't really draw inferences into how similar
13 these evaluators are. I can see that score appears to be
14 fairly consistent, yes.

15 Q Now, Mr. Kemp talked to you a little bit compliance
16 and the issue you had with regard to your company selling to a
17 minor. Remember that?

18 A Well, by -- "minor" is I think a legal term; right?

19 Q Okay. Well, do you remember the conversation that
20 you just had moments ago with Mr. Kemp with regard to that
21 issue?

22 A Yes. But I just want to clarify that I don't it was
23 a minor. I think it was someone who was less than 21, but
24 older than 18.

25 Q Okay. For the purposes of selling marijuana to

1 individuals in the state of Nevada an individual has to be
2 21 years or older; correct?

3 A Yes.

4 Q Okay. And --

5 A Unless they're a medical card patient -- holder.

6 Q Now, you are aware of the different categories of
7 violations with the Department of Taxation when there's an
8 investigation; correct?

9 A Generally.

10 Q Okay. There's a Category 1 violation; right?

11 A Uh-huh.

12 Q Correct?

13 A I believe so. I don't remember the exact
14 nomenclature, but that sounds familiar.

15 Q So you are aware that there's three different
16 categories of violations; correct?

17 A Generally, yes.

18 Q All right. Category 1 violation would or could
19 result in revocation of a license. Are you aware of that?

20 A I'd have to go back and refresh my memory.

21 Q In fact, sale to a minor could be considered a
22 Category 1 violation, which would result in a revocation of a
23 license.

24 A Yeah. I would assume that if someone was
25 intentionally selling to minors I could see that being

1 something that would be worthy of revocation. In our case it
2 was an accident, we discovered it, and we terminated the
3 employee who allowed it to happen, and formally disciplined
4 two others. So we take and took that extremely seriously and
5 did the best we could given the circumstances to ensure that
6 proper action was taken, it was properly and immediately
7 divulged to the State, and that we put in safeguards to
8 prevent that from happening in the future.

9 For example, the software that we use for our point
10 of sale software unfortunately doesn't allow for automatic
11 detection of under 21. And this was also at a point in time
12 where the current ID scanners that we use were not in effect.
13 So we've seen taken steps to ensure that that would not happen
14 again.

15 Q That was negligent, wasn't it?

16 MR. KOCH: Objection. Legal conclusion.

17 THE COURT: Overruled.

18 THE WITNESS: Yeah. I don't really know what you
19 mean by negligent. I mean, it was -- it was --

20 BY MR. CRISTALLI:

21 Q Well, you said it was accidental.

22 A I'm still speaking.

23 It was unfortunate, it was serious in terms of
24 something that we took very seriously. I was very alarmed
25 when I learned about this incident. It's definitely something

1 that is not consistent with who we are as a company. And
2 that's why we immediately performed an investigation, took
3 necessary action, and notified the State.

4 But, again, I have to remind you we're talking about
5 -- we're not talking about the party to this case here.
6 You're talking about a completely different entity. So I'm
7 not really sure where you're going with this.

8 Q Well, compliance -- in terms of a marijuana
9 establishment and compliance and what the State does in terms
10 of its regulation, none of that information was provided to
11 the Department of Taxation and the reviewers of the
12 application considering whether or not an applicant should be
13 approved or not; correct?

14 A As I said earlier, we're talking about a separate
15 entity, first and foremost.

16 Secondly, the Department has all of the compliance
17 history for the companies that I'm involved with. And so it
18 was unnecessary for me to provide something that they already
19 had.

20 And thirdly, it wasn't called for in the
21 application, so I'm not really sure what your point is.

22 Q Well, that is my point. It wasn't called for in the
23 application, was it?

24 A To my knowledge, no.

25 MR. CRISTALLI: Court's indulgence.

1 THE COURT: Mr. Bult, do you have any questions for
2 this witness?

3 MR. BULT: I don't, Your Honor.

4 THE COURT: Mr. Parker?

5 MR. PARKER: I do, Your Honor.

6 MR. CRISTALLI: I'll just follow up, Your Honor.

7 BY MR. CRISTALLI:

8 Q I had discussed with you the fact that MM had
9 provided information with regard to a specific location for
10 its application. I think I misspoke. Instead, it's Livfree.
11 Are you familiar with the fact that Livfree in fact provided
12 information specific to a location regarding a letter of
13 intent or purchase agreement in regard to its understanding of
14 the requirements about locations in a particular jurisdiction?

15 A I'm not familiar with their application.

16 MR. CRISTALLI: Court's indulgence.

17 No further questions, Your Honor.

18 THE COURT: Mr. Parker.

19 CROSS-EXAMINATION

20 BY MR. PARKER:

21 Q Good afternoon, Mr. Jolley.

22 A Good afternoon.

23 Q You mentioned several times the Listserv,
24 information on Listserv. Do you recall that?

25 A Yes.

1 Q All right. Is that a list that the DOT has that it
2 provides information to people in the industry maybe or people
3 wanting to get into the industry?

4 A I believe so, yes.

5 Q Did you receive information through this Listserv by
6 email, by letter, by telephone call, by text? How did you
7 receive information from the Listserv?

8 A Well, I think the Listserv by definition is an email
9 distribution system.

10 Q Did you keep all of those emails that you received
11 through Listserv?

12 A I don't recall offhand.

13 Q Do you know if that would be something that your
14 company keeps as a part of its document retention policy?

15 A I don't believe those informational types of emails
16 would be included in our document retention policy, but I'd
17 have to double check that.

18 Q Do you recall destroying or deleting any of those
19 emails?

20 A Not that I can recall off the top of my head. It
21 was a while back.

22 Q Have you produced any of those emails to your
23 counsel?

24 A I don't recall.

25 Q Has your -- has anyone else in your office, to your

1 knowledge, provided any Listserv information on your behalf to
2 your counsel?

3 A I am unaware of that.

4 (Pause in the proceedings)

5 MR. PARKER: Your Honor, I think we got an agreement
6 from the State that they'll get the Listserv information for
7 us.

8 THE COURT: Uh-huh. I heard that. Aren't they
9 cooperative with you, Mr. Parker.

10 MR. PARKER: You know, I really appreciate that.

11 THE COURT: Effusive, being very nice, polite.

12 MR. PARKER: Well, I'm in the same box, I think,
13 Your Honor.

14 BY MR. PARKER:

15 Q So do you recall or did you ever take a notice of
16 the industry folks on the Listserv publications or disclosures
17 or dissemination of information?

18 A Are you asking am I familiar with who was on the
19 Listserv?

20 Q Yes.

21 A Who was on the distribution list?

22 Q Yes.

23 A No. I don't believe that's public information. I
24 think that -- I think that, you know, the points of contact
25 for marijuana establishments are included, and then people can

1 voluntarily sign up for updates with the Department, as well.

2 Q So when you receive something through this Listserv
3 you don't by chance of a list of all the other recipients
4 receiving the information?

5 A I don't believe so. I think generally you just see
6 that it's from, you know, the Department, from the Listserv.
7 You don't see all the other recipients of the email. I think
8 that -- yeah.

9 Q So earlier today when you were speaking generally of
10 how this consensus among the applicants knowing this
11 information or that information it wasn't based upon your
12 review of the Listserv, because you don't know what applicants
13 or potential applicants received that Listserv information; is
14 that correct?

15 A Yeah. It was more to do with my involvement in the
16 industry, holding monthly meetings for the Nevada Dispensary
17 Association that, as I said earlier, represents a vast
18 majority of the owners, and my day-to-day involvement in the
19 industry.

20 Q So, for example, you never spoke with Mr. Hawkins
21 about information you received from Listserv?

22 A I don't recall speaking with Mr. Hawkins about that.

23 Q You don't recall speaking to Mr. Dave Thomas about
24 information received from the Listserv?

25 A No, not specifically.

1 Q Or Mr. Steve Menzie?

2 A Not specifically, no.

3 Q Or anyone affiliated with MM?

4 A No.

5 Q So the broad statements, the broad brush you were
6 painting with regarding there was no confusion in this
7 process, it was not based upon your review of the Listserv
8 information, because you don't know who or what companies
9 actually received the Listserv information; is that correct?

10 A I don't think anyone in the private sector, you
11 know, outside the Department itself, has access to the
12 recipients of the Listserv. I think that might be, you know,
13 a violation of the Department's policies. I would certainly
14 hope they wouldn't divulge my email address to the public.

15 But, as I said earlier, it was my job to stay up to
16 date with what was happening in the industry. I think I did a
17 very good job in our efforts to help further the industry and
18 help it operate successfully.

19 And so my statement was that if there was a general
20 confusion and all of these people were without communication
21 from the Department, I think I would have known about it. And
22 I simply don't recall anyone bringing up an issue with the
23 Listserv or not getting emails from the department.

24 Q Did you ask any questions of the DOT during the time
25 leading up to the submission of applications?

1 A I didn't have direct, you know, one-on-one
2 communication with them about the application. But, as I said
3 earlier, I was certainly involved with some of the -- well,
4 involved meaning attended some of the hearings that took place
5 and some of the discussions that were happening leading up to
6 the application process.

7 Q You said you had no direct communications.

8 A Well, meaning --

9 Q Did you have some indirect?

10 A Meaning one on one. So there were occasions where I
11 would ask either members of my team or our legal counsel for
12 their opinion or clarification on certain issues. But did
13 not, at least to the best of my knowledge, go back and, you
14 know, call up the Department and ask them, you know, specific
15 questions about the application.

16 Q Were you finished?

17 A Yeah, I was. Thank you.

18 Q Did anyone on behalf of your company, either Nevada
19 Organics or Henderson Organics, call and speak to anyone at
20 the DOT?

21 A They may have. I'm not -- I'm not sure.

22 Q Did you see any information come back in the form of
23 a Listserv promulgation or publication or disclosure answering
24 a question you may have had regarding the application process?

25 A That I may have had? Not that I can recall. There

1 may have been general communications where they had FAQs that
2 other -- you know, in cases where other people asked
3 questions, and they publish those. I know that they've done
4 that in the past.

5 Q So to the best of your knowledge you don't recall
6 any of the questions that you may have had or people within
7 your group may have had that were answered through a Listserv
8 dissemination?

9 A It may have occurred, but I can't recall any off the
10 top of my head.

11 Q Okay. Did you actually download or in some way pick
12 up the application that was used on behalf of Nevada Organics?

13 A I believe I did, yes.

14 Q And can you tell me how obtained that application.

15 A I don't recall. It may have been in an email
16 attachment.

17 Q All right. In an email attachment from whom?

18 A I don't know. It could have been the Listserv, it
19 could have been our attorney. I'm not -- I'm not sure exactly
20 how I received it.

21 Q You indicated that it was either ignorance or just
22 not being familiar with the application that someone could
23 have used an application different from the application Nevada
24 Organics used. Do you recall that general testimony?

25 A I don't think I used those specific words, but I can

1 certainly recall discussing it a few minutes ago, yes.

2 Q All right. Wouldn't you agree with me that if there
3 were more than one application that application would have
4 been created by the DOT?

5 A Yes.

6 Q All right. So to the extent there was any
7 confusion, the confusion was created by having more than one
8 application available for the applicants; is that correct?

9 A Well, look, I mean, you know, what if they had a
10 previous --

11 Q Let me -- let me stop you for a second, only because
12 I am very patient, I don't interrupt people. If I do, I
13 apologize.

14 A You just did.

15 THE COURT: Wait.

16 BY MR. PARKER:

17 Q But I interrupt you only because I didn't hear a yes
18 or no.

19 THE COURT: It's 4:25. I've got 20 minutes before
20 I'm breaking for the day. If you're not done, we return at
21 9:15 in the morning.

22 Mr. Parker, did you want to continue?

23 BY MR. PARKER:

24 Q That is a cue to me to let you answer regardless of
25 what you're about to say. Go right ahead.

1 MR. PARKER: Understood, Your Honor.

2 THE WITNESS: Please restate your question.

3 BY MR. PARKER:

4 Q The question is if there was confusion regarding the
5 application, that confusion was created by having more than
6 one available application for applicants to use. Isn't that
7 true, sir?

8 A I don't -- I don't know that I can say that
9 conclusively. What if someone was, you know, not paying
10 attention? What if they downloaded the wrong form even though
11 the headings could have been correct. There's any number of
12 hypothetical circumstances that could lead someone to, you
13 know, use the wrong application. So it's not, you know -- I
14 don't think that that was a common thing at the time in my
15 experience.

16 Q Well, you really don't have any foundation for the
17 opinion that it wasn't common, because you've never done a
18 survey or asked or performed a census to determine how many
19 people used one application versus another. Is that true?

20 A I personally conducted monthly NDA meetings with
21 owners and managers of the majority of dispensary owners in
22 the state every month before, during, and after the
23 application process. And I think if there was a general
24 confusion about which form of application to use, I would have
25 heard about it. And I didn't. And so that's what I'm --

1 that's the experience that I'm using when I say that I was
2 unaware of any mass confusion. There could have been isolated
3 instances in which somebody, you know, perhaps mistakenly used
4 the wrong one, forgot to download the new one, looked at an
5 old email, didn't check their email. I don't know. There's
6 any number of situations that could have caused that. But I
7 don't think it was a widespread issue.

8 Q Okay. That's fine. Let's not talk about widespread
9 or not widespread. The question is, which I believe is fairly
10 focused, if there was more than one application available for
11 applicants, would you agree with me that that confusion in
12 terms of which one was available or having two available would
13 have been created by the DOT?

14 A Not necessarily.

15 Q All right. So do you believe that there should have
16 been two applications available for applicants to use?

17 A No.

18 Q Or just one?

19 A One.

20 Q Good enough. And if there were two, who would have
21 created those two?

22 A If there were multiple drafts like, for example, an
23 old draft and a new draft --

24 Q No. Just two.

25 A -- they would have come -- both would have come from

1 the DOT.

2 Q Thank you.

3 You indicated during your examination by Mr. Kemp
4 that it was your understanding that you did not have to secure
5 -- and I tried to take verbatim notes -- did not need to
6 secure a location. Did you learn that through the application
7 process, or did you learn that through some type of
8 communication with the DOT?

9 A I learned that from the application itself and
10 through speaking with our internal team and our counsel about
11 that specific issue.

12 Q Now, why did you need to speak with your team if it
13 was clear on the application?

14 A Because I believe there was discussion earlier in
15 the process of making the location a requirement. That's
16 something that I led when we applied in 2014, and so I knew
17 that it would be a significant undertaking to secure
18 locations, and so it was an issue that I was very much
19 interested in. And it became obvious that that was not going
20 to be a requirement. And I believe it was clearly
21 communicated in an email from the Department, if I'm not
22 mistaken, going off of memory a couple years ago. But I
23 believe that was the case. Or a year ago.

24 Q So let me make sure we're clear. Email as a part of
25 a Listserv or a separate email to your company based upon that

1 question?

2 A No, not specific to our company. It would have been
3 an email, general, you know, broadcast Listserv-type email.

4 Q And you recall that being generated by the
5 Department of Taxation?

6 A It would have been, yes.

7 Q Do you recall the time period?

8 A No. And, again, I'm going off of my memory from a
9 year ago. But I certainly recall receiving the news that that
10 was not a requirement.

11 Q It was so clear in the application that they had to
12 send out an email to make it clearer. Is that what happened?

13 A Again, I'm going off of memory here, but I believe
14 that there was an email clarification sent out by the
15 Department clearly articulating certain changes that had been
16 made from the first draft to the second draft of the
17 application form, if I'm not -- if I'm not mistaken. And if I
18 recall, that was one of them, that the location issue was one
19 of the changes that was made explained in the email.

20 Q Do you recall who offered that document?

21 A No.

22 Q And do you remember the year?

23 A It would have been 2018.

24 Q Okay. Do you remember was it sometime between
25 September 8th and September 20th, or before September 8th?

1 A It would have been before September.

2 Q Do you remember specifically if it was part of a
3 Listserv dissemination?

4 A No. I would -- I would say that it probably was,
5 but I'd have to go back and, you know, refresh my memory.

6 Q Do you know if that email was in some way attended
7 to or attached or disseminated along with the application
8 sometime between September 8th and September 20th?

9 A I don't recall what date it was, to be honest.

10 Q If it was not a part of a Listserv, how would the
11 general public become aware of it?

12 A I stated that I believe it was part of the Listserv.

13 Q Okay. And let's ask it this way, then. If the
14 general public was not a part of the Listserv, how would the
15 general public receive it?

16 A You'd have to ask the Department. I don't know all
17 of the mechanisms they use to disseminate that information.

18 Q Did you prepare the applications, you personally
19 prepare the applications for the eight licenses that Nevada
20 Organics was attempting to obtain?

21 A I oversaw the process and wrote much of the content
22 myself and was intimately involved in every step, yes.

23 Q Do you remember how many Post Office boxes you used
24 for the eight -- out of the eight licenses?

25 A I don't think we used any Post Office boxes.

1 Q Do you fill out the annual list of members and
2 managers for your LLC?

3 A Personally, no.

4 Q Do you know who does?

5 A I don't.

6 Q Do you know if any of your -- and you said this two
7 different ways. Originally when Mr. Kemp asked you about your
8 human resource director and your purchasing director you
9 called them directors. Later on in his conversation you
10 changed them from directors to officers after we took a
11 restroom break or whatever we took. Do you know why you
12 changed the description from director to officer?

13 A Their title is -- for example, Kim Lester, her title
14 is director of Human Resources, okay. But if you look at our
15 application, which was an exhibit that we all looked at
16 earlier, we checked the box "officer." So I apologize if I
17 wasn't clear in how that was communicated. But we consider
18 her to be an officer of the company because she signs
19 contracts, she hires and fires, she has a tremendous amount of
20 authority within the company. And her title is director of
21 HR, okay. But, you know, she's not a board member, right, so,
22 you know --

23 Q Right.

24 A Sorry if I'm not explaining that, you know,
25 correctly. I'm not a legal expert on corporate law, but

1 that's my understanding.

2 Q Yeah. Those remarks are helpful.

3 So the statute calls for owners, officers, and board
4 members; is that correct?

5 A I believe so.

6 Q You understood that the statute didn't call for
7 directors; is that correct?

8 A I'm not sure that I recall that it specifically did
9 not call for that. You know, going off of memory here, but,
10 you know, it was our understanding that all owners, officers,
11 board members, et cetera, would need to be disclosed, and we
12 wanted to be very forthright about who is involved in the
13 company and how the company operates.

14 Q You would agree with me, however, that your director
15 of Human Resources and your director of Purchasing was not an
16 identified category under the application or the statute? The
17 statute doesn't say "director." Is that a fair statement?

18 A My interpretation of that form that says "officer"
19 to me connotes people who have tremendous authority to bind
20 the company in contract, that kind of thing. So that was our
21 intention in putting those folks on there.

22 Q And thank you for explaining your intention. I just
23 want to make sure that were on the same page. The word
24 "director" is not used in that part of the statute nor the
25 application. It says owners, officers, and board members. Is

1 that correct?

2 A I'd have to go back and read it, but --

3 MR. PARKER: Shane, can you put that back up. I
4 need 453D.218. Yeah. We can use Exhibit 5, I believe, or we
5 can use --

6 Can you pull up 127, page 12 and 13. I guess that's
7 the quickest way to get to it right now.

8 BY MR. PARKER:

9 Q So you see the top?

10 A Yes.

11 MR. PARKER: Can you highlight it for me, Shane.

12 BY MR. PARKER:

13 Q And I believe that's taken directly from Assembly
14 Bill 422, which says the same, "owners, officers, board
15 members." Do you see that?

16 A Yes.

17 Q All right. So there is no place for directors. So
18 the director of Human Resources wouldn't have a place in that
19 list, nor would the director of purchasing have a place in
20 that list; is that correct?

21 A We considered Courtney Barker to be an officer.

22 Q Let me ask it one more time. The word "director" is
23 not included here; is that correct?

24 A I don't see it.

25 Q All right. So you were simply inserting names based

1 upon the description you gave them at your office, which is
2 director of Human Resources, without some interpretation gave
3 me earlier. You would agree with me that your director of
4 Human Resources and your director of Purchasing wouldn't fit
5 under that -- either of those three categories?

6 MR. KOCH: Objection. Argumentative.

7 THE COURT: Overruled.

8 THE WITNESS: Yeah. We discussed this with our team
9 and our legal counsel and felt that we were doing -- we were
10 complying with the rules of the application to the best of our
11 ability.

12 BY MR. PARKER:

13 Q And that's fine. I'm not asking, you know,
14 necessarily what you discussed with your team. I'm simply
15 asking what we see on the board and the positions they held at
16 your office. They were not -- they were directors. Based on
17 your earlier testimony today they were not board members, they
18 were not officers, and they were not [unintelligible]; isn't
19 that correct? Without interpretation and discussion.

20 A They're officers, yeah.

21 Q That's your belief?

22 A Yep.

23 Q Now, when you -- you said you never did your annual
24 list?

25 A No.

1 Q Do you know what an annual list is?

2 A Generally.

3 Q Tell me what it is in your -- based upon your
4 understanding.

5 A It's a list of, you know, members of an LLC or
6 managers of an LLC that's filed with the Secretary of State.

7 Q Do you have any female owners -- I'm sorry, members
8 or managers? Not owners, but members or managers?

9 A Yes.

10 Q Who would be a female member?

11 A Liesl Sicz.

12 Q And who -- do you have any female managers?

13 A Managers of the LLC?

14 Q Yes.

15 A No. The managers I believe are Steve Byrne and
16 myself.

17 Q Do you have titles like president, vice president,
18 treasurer as a part of your LLC?

19 A We use, you know, CEO and director titles in our
20 company.

21 Q Okay. Who's the CEO?

22 A I am.'

23 Q Is there a deputy CEO or anyone -- who's next in
24 charge under the CEO?

25 A Director of operations.

1 Q Is that also a member?

2 A No.

3 Q Who is that?

4 A He's not an owner. Well, he's a shareholder. His
5 name is Brandon Wygand.

6 Q Did you list that person as a part of the ownership
7 of Nevada Organics?

8 A He's not an owner.

9 Q You said he's a shareholder.

10 A Well -- so he holds shares of what is now called
11 Green Growth Brands, GGB, previously Xanthic. And so in a
12 sense he, you know, owns shares of the company. But we
13 discussed that --

14 THE COURT: Sir, are shares equity?'

15 MR. PARKER: Good question. Very good question. I
16 was going there next.

17 THE COURT: Because I know the answer.

18 THE WITNESS: I believe so. So --

19 THE COURT: Okay.

20 THE WITNESS: -- my understanding is that, you know,
21 that's how the Department has chosen to handle disclosures of
22 publicly traded companies.

23 BY MR. PARKER:

24 Q So did you list -- strike that, because I want to
25 make sure we're on the same page here.

1 How many other shareholders did you have of Nevada
2 Organics prior to your submission of your application sometime
3 before September 20th of 2018?

4 A So GGB Nevada owned 95 percent prior to submission.
5 GGB Nevada was wholly owned by Xanthic Biopharma. Xanthic
6 Biopharma is a publicly traded company.

7 In addition to GGB Nevada the other owners of Nevada
8 Organic Remedies were myself, Steve Byrne, Darren Peterson,
9 Pat Byrne, and Liesl Sicz through her entity Harvest.

10 Q Okay. And did you list all of them?

11 A Yes.

12 Q All right. And you list their percentages?

13 A Yes.

14 Q All right. In terms of GGB did you list all of
15 their owners?

16 A The rule for publicly traded companies is to list
17 their board members and officers. Which we did. And we fully
18 disclosed that.

19 Q Where did that rule come from?

20 A That's always been my understanding how the
21 Department has operated, and I believe that's in the
22 application itself.

23 Q No, no. Tell me where -- if you can recall, where
24 in the application did that come from? We've looked at this
25 application now for many more days than any of us thought we'd

1 be here. So tell me where in the application you recall
2 seeing that.

3 THE COURT: And if you need us to bring the up to
4 refresh your memory, please let us know, and they will put it
5 up on the screen for you.

6 BY MR. PARKER:

7 Q Do you know where it is?

8 A Yeah. There's a portion that talks about board
9 members and officers.

10 MR. PARKER: So, Your Honor, can I give him --

11 THE COURT: Why don't you give him Exhibit 5.

12 MR. PARKER: I will get it for him.

13 THE COURT: Maybe 5A. I don't know which one's the
14 right one.

15 MR. SHEVORSKI: I think I know.

16 BY MR. PARKER:

17 Q Start 5 or 5A. And let me know when you get to the
18 point that you believe the rule is there, and I'll ask you
19 some questions on it.

20 THE COURT: You've got three minutes left, Mr.
21 Parker.

22 MR. PARKER: It may take him longer than that, Your
23 Honor.

24 THE COURT: It may. I'm just making sure everybody
25 understands.

1 MR. PARKER: And I appreciate what you said to me
2 earlier about --

3 THE COURT: You weren't the only one.

4 MR. PARKER: -- letting him answer.

5 THE COURT: You weren't the only one I said it to,
6 Mr. Parker.

7 MR. PARKER: That's right. You've also said, give a
8 person enough rope.

9 THE WITNESS: Okay.

10 BY MR. PARKER:

11 Q All right. Read it to me, please.

12 A Well, if you look at Attachment A, it discusses the
13 owners, officers, and board members of the marijuana
14 establishment. I don't see a -- well --

15 Q Tell me what page you're on.

16 A 22.

17 MR. PARKER: Page 22. Can you put that on the
18 screen for us all, Shane.

19 THE COURT: Is that the page you're on that's on the
20 monitor, sir?

21 THE WITNESS: Yeah.

22 THE COURT: Okay.

23 BY MR. PARKER:

24 Q Now, I don't see any exclusions here for owner.
25 It's shareholders and owners. Don't you have that

1 understanding?

2 A In the traditional sense I think when these rules
3 were put in place I don't think the Department contemplated
4 the logistical implications of publicly traded companies. MM
5 Development, for example, is a publicly traded company, a
6 plaintiff in this lawsuit. I could go on right now and buy
7 shares of their company; right? So it's impractical to
8 require someone who owns one share of MM to be listed here.
9 So my understanding -- and, you know, maybe it's been, you
10 know, so long that it's just become, you know, part of my
11 understanding, I can't tell you exactly right here as I sit
12 today where it came from. But the rule has always been as far
13 back as I can recall that for publicly traded companies, you
14 know, there's a certain threshold before having to be listed
15 or something like that.

16 THE COURT: So, we're going to break. It's 4:45.
17 I'll see you guys at 9:15.

18 MR. PARKER: Thank you so much, Your Honor.

19 (Court recessed at 4:45 p.m., until the following day,
20 Tuesday, June 11, 2019, at 9:15 a.m.)

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INDEX

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

Andrew Jolley	16	54/158/201	-	-
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EXHIBITS

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

127, pgs. 12 and 13	101
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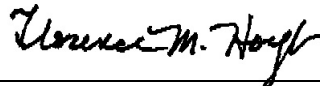
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I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

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