

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,<sup>1</sup>

*Respondents.*

ETW MANAGEMENT GROUP LLC, a  
Nevada limited liability company;

SUPREME COURT CASE NO.  
79669

Electronically Filed  
Jun 19 2020 04:28 p.m.  
CASE NO.: A-19-787004-B  
DEPT NO.: XI Elizabeth A. Brown  
Clerk of Supreme Court

**RESPONDENTS' APPENDIX  
VOLUME VIII**

<sup>1</sup> 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.*

///

///

///

///

**RESPONDENTS' APPENDIX  
VOLUME VIII**

BROWNSTEIN HYATT FARBER SCHRECK, LLP  
ADAM K. BULT, ESQ., Nevada Bar No. 9332  
MAXIMILIEN D. FETAZ, ESQ., Nevada Bar No. 12737  
TRAVIS F. CHANCE, ESQ., Nevada Bar No. 13800  
100 N. City Parkway, Suite 1600  
Las Vegas, NV 89106  
Telephone: 702.382-2101  
Facsimile: 702.382.8135

JENNINGS & FULTON, LTD.  
ADAM R. FULTON, ESQ., Nevada Bar No. 11572  
2580 Sorrel Street  
Las Vegas, NV 89146  
Telephone: 702.979.3565  
Facsimile: 702.362.2060

*Attorneys for ETW MANAGEMENT GROUP LLC, GLOBAL HARMONY LLC,  
GREEN LEAF FARMS HOLDINGS LLC, GREEN THERAPEUTICS LLC,  
HERBAL CHOICE INC., JUST QUALITY, LLC, LIBRA WELLNESS CENTER,  
LLC, ROMBOUGH REAL ESTATE INC. 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 7 Transcript | 06/11/2019 | RA1350 – 1600 |

**RESPONDENTS' APPENDIX (ALPHABETICAL)**

**BROWNSTEIN HYATT FARBER SCHRECK, LLP**  
ADAM K. BULT, ESQ., Nevada Bar No. 9332  
MAXIMILIEN D. FETAZ, ESQ., Nevada Bar No. 12737  
TRAVIS F. CHANCE, ESQ., Nevada Bar No. 13800  
100 N. City Parkway, Suite 1600  
Las Vegas, NV 89106  
Telephone: 702.382-2101  
Facsimile: 702.382.8135

**JENNINGS & FULTON, LTD.**  
ADAM R. FULTON, ESQ., Nevada Bar No. 11572  
2580 Sorrel Street  
Las Vegas, NV 89146  
Telephone: 702.979.3565  
Facsimile: 702.362.2060

*Attorneys for ETW MANAGEMENT GROUP LLC, GLOBAL HARMONY LLC,  
GREEN LEAF FARMS HOLDINGS LLC, GREEN THERAPEUTICS LLC,  
HERBAL CHOICE INC., JUST QUALITY, LLC, LIBRA WELLNESS CENTER,  
LLC, ROMBOUGH REAL ESTATE INC. dba MOTHER HERB, NEVCANN LLC,  
RED EARTH LLC, THC NEVADA LLC, ZION GARDENS LLC, and MMOF  
VEGAS RETAIL, INC. (collectively, "ETW Parties")*

| <b>Document Description</b>                                                                                                                                                                       | <b>Volume</b>                |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------|
| 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<br>RA2002 – 2056   |
| E-mail from Mr. Shevorski (August 21, 2019)                                                                                                                                                       | Volume X<br>RA1902 – 1904    |
| ETW Plaintiffs' Complaint (January 4, 2019)                                                                                                                                                       | Volume I<br>RA0179 – 250     |
| ETW Plaintiffs' Complaint – Continued (January 4, 2019)                                                                                                                                           | Volume II<br>RA0251 – 493    |
| ETW Plaintiffs' Second Amended Complaint (May 21, 2019)                                                                                                                                           | Volume III<br>RA0494 – 743   |
| ETW Plaintiffs' Second Amended Complaint – Continued (May 21, 2019)                                                                                                                               | Volume IV<br>RA0744 – 814    |
| Evidentiary Hearing – Day 4 Transcript (May 30, 2019)                                                                                                                                             | Volume V<br>RA0815 – 1057    |
| Evidentiary Hearing – Day 6 Transcript (June 10, 2019)                                                                                                                                            | Volume VI<br>RA1058 – 1282   |
| Evidentiary Hearing – Day 7 Transcript (June 11, 2019)                                                                                                                                            | Volume VIII<br>RA1350 – 1600 |

|                                                                                                                                                                                                                                           |                             |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------|
| Evidentiary Hearing – Day 7 Transcript – Continued (June 11, 2019)                                                                                                                                                                        | Volume IX<br>RA1601 – 1602  |
| Evidentiary Hearing – Day 17 Transcript (August 13, 2019)                                                                                                                                                                                 | Volume IX<br>RA1603 – 1694  |
| Evidentiary Hearing – Day 20 Transcript (August 16, 2019)                                                                                                                                                                                 | Volume X<br>RA1735 – 1901   |
| Findings of Fact and Conclusion of Law Granting Preliminary Injunction (August 23, 2019)                                                                                                                                                  | Volume X<br>RA1905 – 1928   |
| Google Maps Photo (June 11, 2019)                                                                                                                                                                                                         | Volume VII<br>RA1344 – 1346 |
| Governor’s Task Force on the Implementation of Question 2: The Regulation and Taxation of Marijuana Act (May 30, 2017)                                                                                                                    | Volume I<br>RA0001 – 162    |
| GreenMart of Nevada NLV’s Trial Memorandum (August 15, 2019)                                                                                                                                                                              | Volume IX<br>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<br>RA1929 – 2001  |
| Nevada Organic Remedies’ Organizational Chart (2018)                                                                                                                                                                                      | Volume I<br>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<br>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<br>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<br>RA1283 – 1343 |
| The Essence Entities’ Bench Brief (Corrected) (August 15, 2019)                                                                                                                                                                           | Volume IX<br>RA1724 – 1734  |
| UPS Store Address (June 11, 2019)                                                                                                                                                                                                         | Volume VII<br>RA1347 - 1349 |

DATED this 19th day of June, 2020.

BROWNSTEIN HYATT FARBER SCHRECK, LLP

*/s/ Adam K. Bult*

ADAM K. BULT, ESQ., NV Bar No. 9332  
MAXIMILIEN D. FETAZ, ESQ., NV Bar No. 12737  
TRAVIS F. CHANCE, ESQ., NV Bar No. 13800

JENNINGS & FULTON, LTD.  
ADAM R. FULTON, ESQ., Nevada Bar No. 11572  
Attorneys for ETW Parties

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the foregoing **RESPONDENTS' APPENDIX VOLUME VIII** 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:

David R. Koch  
Steven B. Scow  
Daniel G. Scow  
Brody R. Wight  
KOCH & SCOW, LLC

*Counsel for Appellant/Cross-Respondent  
Nevada Organic Remedies, LLC*


Ketan D. Bhirud  
Aaron D. Ford  
Theresa M. Haar  
David J. Pope  
Steven G. Shevorski  
OFFICE OF THE ATTORNEY  
GENERAL

*Counsel for Respondent  
The State of Nevada Department of  
Taxation*

Margaret A. McLetchie  
Alina M. Shell  
MCLEATCHIE LAW

*Counsel for Appellant  
GreenMart of Nevada NLV, LLC*

/s/ Wendy Cosby  
an employee of Brownstein Hyatt Farber Schreck, LLP



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**

. . . . .

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

**EVIDENTIARY HEARING - DAY 7**

TUESDAY, JUNE 11, 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, TUESDAY, JUNE 11, 2019, 9:23 A.M.

2 (Court was called to order)

3 THE COURT: All right. Counsel, we have an issue.

4 We have Exhibit 26 that is missing. I understand from my  
5 clerk that Exhibit 26 was supposed to be provided by the State  
6 even though it's a plaintiffs' exhibit.

7 Is Mr. Kemp here?

8 THE CLERK: One of the defendants'.

9 THE COURT: Essence/Thrive's application in a  
10 redacted form. Is that what it is, Dulce?

11 THE CLERK: That's what it says on the list.

12 THE COURT: It's what it says on the list. Who's in  
13 charge? Who is in charge of it? Nobody is taking credit.

14 MR. PARKER: Or responsibility.

15 MR. GUTIERREZ: I think that was the evaluator notes  
16 that Mr. Kemp --

17 THE COURT: No. I think it was the application,  
18 because it was before the evaluator notes were produced.

19 Essence/Thrives is what Dulce has on her notes.

20 THE CLERK: It was admitted on the 24th --

21 THE COURT: By stipulation.

22 THE CLERK: It says, "on the list to be produced".

23 THE COURT: Here comes Mr. Kemp. We'll grill him.

24 Mr. Kemp, when does Mr. Rulis come back from  
25 vacation?

1 MR. KEMP: Sunday.

2 THE COURT: Is he coming next week?

3 MR. KEMP: I hope so.

4 THE COURT: We're missing Exhibit 26. Do you know  
5 anything about that?

6 MR. KEMP: Other than it's missing, I don't know  
7 anything about it. You did get 27, though; right? Because  
8 there were two.

9 THE COURT: Dulce is only telling me what we're  
10 missing.

11 So when Mr. Rulis is here on Monday we will find out  
12 where Exhibit -- or on Tuesday we'll find out where Exhibit 26  
13 is.

14 Dulce, you might want to send him an email so when  
15 he gets into the office on Monday he can look for it and  
16 resolve it before he shows up on Tuesday.

17 (Pause in the proceedings)

18 THE COURT: All right. Are we ready to continue and  
19 finish up Mr. Jolley?

20 Mr. Parker.

21 MR. PARKER: I am, Your Honor.

22 THE COURT: Anything else before Mr. Jolley starts?

23 Mr. Jolley, let's get you finished and get Mr.  
24 Gilbert back on. I told Mr. Gilbert yesterday it was an hour  
25 and a half that he would have a break. It didn't turn out

1 that way.

2 ANDREW JOLLEY, DEFENDANTS' WITNESS, SWORN

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

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

7 THE COURT: Mr. Parker, you may continue. Mr.  
8 Parker, you can continue.

9 MR. PARKER: Thank you, Your Honor.

10 CROSS-EXAMINATION (Continued)

11 BY MR. PARKER:

12 Q Good morning, Mr. Jolley. How are you?

13 A Good morning. I'm wonderful, thank you.

14 Q Good. Mr. Jolley, when we left off yesterday we  
15 were talking about the confusion created by more than one  
16 application, Exhibits 5 and 5A. Do you recall that?

17 A Yes, I recall.

18 Q And I want to finish that line of questioning by  
19 asking you whether or not either Exhibit 5 or 5A specifically  
20 indicate which applications should be used. For example, does  
21 5A say no, this is -- I'm not the right application to use,  
22 you should be using 5, which is Exhibit 5. Or does 5 say no,  
23 I'm the earlier version, you should look to the DOT for the  
24 updated version. Is there any indication on 5 or 5A which  
25 application is correct?

1           MR. KOCH: Objection. The document speaks for  
2 itself.

3           THE COURT: Overruled.

4           THE WITNESS: If memory serves, there was an email  
5 or some communication sent by the Department stating that --  
6 which form of the application was the updated form.

7 BY MR. PARKER:

8           Q     Let me ask it one more time. Looking at Exhibit  
9 5 --

10          MR. PARKER: I'm sorry, Your Honor. Is Exhibit 5 in  
11 front of the witness?

12          THE COURT: It's not on the screen.

13          MR. PARKER: May I approach, Your Honor?

14          THE COURT: It's now on the screen in front of him.

15          MR. PARKER: Well, I want to give him the hard  
16 copies so he can look at those.

17          THE COURT: You can, Mr. Parker. You can approach  
18 and get it out of the book for him.

19          MR. PARKER: Thank you.

20 BY MR. PARKER:

21          Q     So if you could look at the face of 5 and 5A, first  
22 page of those two exhibits. Can you tell me if either exhibit  
23 indicates that it is the appropriate application to use.

24          A     I can't tell by looking at the front page of these  
25 exhibits.

1           Q     All right. Is it fair to say, sir, then, if a  
2 person did not receive the email that you were speaking of  
3 earlier or perhaps was not on the -- a part of the Listserv,  
4 that simply by looking at the applications themselves they  
5 wouldn't know which application is the appropriate application  
6 to use?

7           MR. KOCH: Objection. Speculation.

8           THE COURT: Overruled.

9           THE WITNESS: Yeah. I think you'd have to look at  
10 the context and the source of the application.

11 BY MR. PARKER:

12          Q     Is it a true statement, sir, that without having any  
13 additional information other than either application in front  
14 of you you would not know which application is correct?

15          A     Well, I'm only looking at the front page.

16          Q     Look at all of the pages, sir. Take your time.

17          MR. KOCH: Your Honor, he's asking him to look at  
18 two 34-page documents and whether they say something within  
19 them. The documents speak for themselves.

20          THE COURT: Overruled. He can look at them and tell  
21 me. We had him do the same thing yesterday. If it refreshes  
22 his mind, let me know.

23                         (Pause in the proceedings)

24          THE WITNESS: Can you please restate your question.

25        //

1 BY MR. PARKER:

2 Q Certainly. Looking at those two documents, is there  
3 any indication, be it Exhibit 5 or 5A, that one is the  
4 appropriate application to use versus the other?

5 A Looking at the application itself and ignoring the  
6 context from which it came, I can't determine -- well, let me  
7 rephrase that. There's differences in these two applications.

8 Q We understand that.

9 A They're not the same. So in a sense I guess you  
10 could determine which one was the more up-to-date application,  
11 you know, looking back. But there's nothing on the face of  
12 the application that I can see sitting here that would  
13 indicate the date from which that application was applicable.

14 Q Right. There's nothing indicating a revision date;  
15 is that correct?

16 A Not that I can see.

17 Q There's nothing that would say to a applicant, this  
18 is the right one and this is the wrong one, on the face of  
19 those two documents?

20 A Yeah. You'd have to look at the context from which  
21 the application came.

22 Q Thank you, sir. Now, yesterday you were telling me  
23 why you listed certain employees as officers. Do you recall  
24 that?

25 A I don't think that's what I said.

1 Q Okay. You did inform me and the Court that you  
2 listed your Human Resource director and your procurement or  
3 purchasing director as, who are employees. They are  
4 employees; is that correct?

5 A Yes.

6 Q Okay. And you listed them as officers in your  
7 application; is that correct?

8 A We believe they are officers, and we listed them as  
9 such in order to be thorough and accurate.

10 Q Good enough. Are there any other officers of Nevada  
11 Organics that you've listed in your application?

12 A Yes.

13 Q All right. And who are those other officers?

14 A I'd have to look back at it, but I can try my best  
15 to go from memory.

16 Q Were any of them employees?

17 A Well, I think all officers are employees. Our  
18 officers work for the company and also have additional  
19 authority within the company.

20 Q Let me -- I like that response. So do you believe  
21 that all employees can be considered officers?

22 A No.

23 Q All right. So then tell me what other employees you  
24 listed as officers --

25 A We --

1 Q -- for purposes of your 2018 application.

2 A So the application asked us to list officers,  
3 owners, and also key personnel, and we did that.

4 Q Key personnel was a part of the application request?

5 A If memory serves.

6 Q In terms of Exhibit 5, again -- it's on the screen  
7 right now. You can look at it again. That's Exhibit 127.

8 MR. PARKER: Can you highlight the title again, or  
9 the portion that says, I believe, "owners, officers, and board  
10 members."

11 BY MR. PARKER:

12 Q Do you see key employees in that, on Exhibit 127,  
13 which is in front of you, sir?

14 A No. But if you look at page 17, section 6 of the  
15 application, reading from the first paragraph, "The  
16 description of the proposed organizational structure of a  
17 proposed marijuana establishment and information concerning  
18 each owner, officer, and board member, including key personnel  
19 of the proposed marijuana establishment, including information  
20 provided pursuant to R092-17." So, again, we listed the  
21 officers who run and manage the company, including the folks  
22 you just mentioned. And pursuant to the application we, you  
23 know, think, you know, also included some information about  
24 others who work in the company.

25 Q All right. Did you list any other employees as



1 officers? That's the question I have before you right now.

2 A I think our application is self evident who we  
3 listed.

4 Q You don't recall?

5 A We listed the officers who run the company, board  
6 members, and owners.

7 Q You don't recall the name of any of the employees,  
8 is what I'm asking you, that you listed as an officer?

9 A If they were an officer, we wrote down their name  
10 and we indicated they're an officer and their title, and in  
11 other sections of the application we went into detail about  
12 their title, their general responsibility.

13 Q Let me see if I can focus this question so I can get  
14 a more focused response. Do you know the name of any other  
15 employees that you listed as officers?

16 A Let's see, you're using the word "employee," and I'm  
17 saying we stated who the officers of the company are on the  
18 application in the section.

19 Q Were any of those other officers employees?

20 A You know, I don't know the legal term of what you're  
21 trying to get me to say here. But when somebody comes in to  
22 work everyday and works for a company full-time I consider  
23 that person to be an employee in addition to whatever other  
24 responsibility or title they would have. You know, I mean,  
25 myself included.

1           Q     How about I help you with these questions.

2           MR. PARKER: All right. Your Honor, I'd like to  
3 have use of the Elmo.

4           THE COURT: You may.

5           MR. PARKER: Thank you. Your Honor, I'm going to  
6 put on the screen -- and I think the Court can take judicial  
7 notice under 47 of the Nevada Secretary of State's  
8 instructions for LLCs.

9           THE COURT: Does anyone have an objection to him  
10 using this as a demonstrative exhibit?

11           You may use it as a demonstrative exhibit and mark  
12 it as such.

13           Sir, if you need him to blow it up --

14           MR. PARKER: I brought copies just in case anybody  
15 wanted to have a copy.

16           THE COURT: All right. Sir, if you want him to hand  
17 you a copy --

18           THE WITNESS: It's okay. I can see it. Thank you.

19           THE COURT: Okay.

20           THE CLERK: Mr. Parker, do you have any extra ones?

21           MR. PARKER: Yeah. I brought one for you, too.

22           THE CLERK: Thank you.

23           MR. PARKER: Your Honor, may I approach the clerk?

24           THE COURT: You may.

25           MR. PARKER: May I also approach the witness, Your

1 Honor?

2 THE COURT: You may.

3 THE CLERK: It will be D5.

4 MR. PARKER: Thank you.

5 BY MR. PARKER:

6 Q So, sir, have you ever seen this before?

7 A I may have. I don't recall.

8 Q So these are the instructions for an LLC in the  
9 state of Nevada. And if you were to turn to the second page  
10 of D5, you would see that this document is a form that you can  
11 use to identify whether or not you're going to be member  
12 managed and, if so, those members and managers and the names  
13 and addresses. Do you see that?

14 A Yes.

15 Q All right. Did you list any of these employees as  
16 members or managers that you identified as officers in your  
17 application?

18 MR. GRAF: Objection, Your Honor. Compound.

19 THE COURT: Overruled.

20 THE WITNESS: I don't know.

21 BY MR. PARKER:

22 Q All right. Let me see if we can help your --

23 THE COURT: Jill, can you hear Rusty from the back  
24 there?

25 So I can hear you, Mr. Graf, but Jill can't. So

1 that's more important.

2 MR. GRAF: For the record, objection, compound.

3 THE COURT: Overruled.

4 MR. GRAF: Do you have another copy?

5 MR. PARKER: Would you like another copy, Graf?

6 MR. GRAF: I would.

7 MR. PARKER: Here you go.

8 MR. GRAF: Thank you.

9 MR. PARKER: You're welcome.

10 BY MR. PARKER:

11 Q So the third page of this document there's a big box  
12 at the bottom that says, "manager or managing member." Do you  
13 see that?

14 A Yes.

15 Q Did you list any of these employees or officers, as  
16 you call them, in this document when you opened up Nevada  
17 Organic Remedies?

18 A I believe Steve Byrne and myself were listed as the  
19 managers.

20 Q All right. So none of these employees that you  
21 identified as officers were identified in the Nevada Organic  
22 Remedies list of managing members or members for Nevada  
23 Organic Remedies with the Secretary of State of Nevada; is  
24 that correct?

25 A Like I said, I think Steve Byrne and I, who are also

1 on the application, were listed as the managers of the LLC.

2 Q Did you list by chance in an annual list to the  
3 State any officers of Nevada Organics?

4 A Yes.

5 Q All right. Do you know if you listed any of these  
6 employees as officers for purposes of the State?

7 A Again, the officers that we put on our application  
8 were --

9 Q Yes, sir.

10 A -- were provided to the State, yes.

11 Q All right. Well, let's see what you actually said  
12 to the State.

13 MR. PARKER: Here is -- and I'd like to make this  
14 the next exhibit in order, Your Honor -- is Nevada Organic  
15 Remedies LLC filing with the Secretary of State, which I  
16 believe you can also take additional notice under 47.130.

17 THE COURT: It's all -- I'll let it --

18 MR. KOCH: It's already an exhibit. Mr. Kemp may  
19 have it in as an exhibit.

20 THE COURT: Can we use it as a demonstrative  
21 exhibit --

22 MR. KOCH: It's fine.

23 THE COURT: -- rather than trying to get Mr. Kemp to  
24 find it, since Mr. Rulis is on vacation?

25 MR. KOCH: Sure.

1 MR. PARKER: We'll make this D6, Your Honor?  
2 THE COURT: Whatever the next in order is.  
3 MR. PARKER: Would that be correct, Madam Clerk?  
4 THE CLERK: Yes, that'll be good.  
5 MR. PARKER: All right. And I will bring you D6.  
6 May I approach, Your Honor?  
7 THE COURT: You may.  
8 MR. PARKER: The witness as well, Your Honor?  
9 THE COURT: You may.  
10 MR. PARKER: Thank you.  
11 Rusty, you want one?  
12 MR. GRAF: Yes.  
13 THE COURT: You know, we used to call the back row  
14 the peanut gallery, but I'm not sure I want to apply that to  
15 you.  
16 BY MR. PARKER:  
17 Q All right. So this appears to be, we'll start from  
18 the top, Nevada Organic Remedies LLC, your annual list of  
19 officers and members. And at the bottom I see only two  
20 officers, and that would be yourself and Mr. Byrne; is that  
21 correct?  
22 A Yes.  
23 Q You didn't list any other officers, which would  
24 include any employees; is that correct?  
25 A On this form, no.

1           Q     All right. So in terms of the State's recognition  
2 of Nevada Organic Remedies LLC the only officers that are  
3 identified would be yourself and Mr. Byrne; is that correct?

4           A     In the Nevada Secretary of State I believe that's  
5 the case.

6           Q     Thank you. Would the same be true for Henderson  
7 Organic Remedies?

8           A     It's a different ownership structure, and I can't  
9 recall who the managers were initially.

10          Q     Well, let me show you what it says here for  
11 Henderson Organic Remedies.

12                 MR. PARKER: We can make this D7.

13                 THE COURT: Why do I care, since they're not an  
14 applicant that's at issue here? While I certainly care  
15 about --

16                 MR. PARKER: Your Honor, I had that same concern.

17                 THE COURT: Okay.

18                 MR. PARKER: That's why I started with -- I started  
19 with the ones I knew you would have no issue with. This one  
20 only because I believe it ties into something that Mr. Kemp  
21 got into yesterday regarding the similarity of ownership and  
22 similarity of the item under the non-identified care, quality,  
23 and control issues.

24                 THE COURT: I'm not concerned on the compliance  
25 issue that was testified yesterday, since other than as it

1 goes to the compliance issue and the knowledge and whether  
2 that should have been evaluated from an owner, officer,  
3 director issue, which is what I am focusing on with these  
4 applications, I'm not concerned. So I don't need --

5 MR. PARKER: No worries. I won't worry about that,  
6 Your Honor.

7 THE COURT: I don't need to go into the LLC  
8 formation for Henderson.

9 MR. PARKER: For Henderson?

10 THE COURT: Yeah.

11 MR. PARKER: That's fine, Your Honor.

12 THE COURT: I don't need it.

13 MR. PARKER: That's fine, Your Honor. Thank you.

14 THE COURT: Thank you.

15 MR. PARKER: You're welcome.

16 THE COURT: Trying to save some time.

17 MR. PARKER: No. I appreciate it, Your Honor.

18 THE COURT: Although I will let the witness give as  
19 long an answer as he wants.

20 MR. PARKER: I've noticed that, which also allows me  
21 to follow up. So I appreciate both of those considerations,  
22 Your Honor.

23 BY MR. PARKER:

24 Q So, Mr. Jolley, the long and the short of it is in  
25 terms of the Secretary of State of Nevada the only officers



1 you've ever identified under your annual list would be  
2 yourself and Mr. Bryne; is that correct?

3 A I think the document speaks for itself.

4 Q Is that a yes, sir?

5 A This document speaks for itself.

6 Q Is that a yes, sir? I'm entitled to an answer.

7 A I'm giving you an answer.

8 Q You can talk about the document as long as you can.

9 A I mean, when you use words --

10 THE COURT: Sir, can you answer the question yes or  
11 no.

12 THE WITNESS: Ever? I don't know. I don't know.

13 BY MR. PARKER:

14 Q In terms of --

15 A We've sold the company, so I don't know what the  
16 current list is. So I can't answer a definitive statement.

17 Q Well, I was going --

18 A Sold part of the company.

19 Q -- to help you out with that. This list, D6, is the  
20 list that was brought up this morning.

21 A Okay.

22 Q And as of this morning the only officers are  
23 yourself and Mr. Byrne; is that correct?

24 A Yes.

25 THE COURT: Mr. Parker, you're making a

1 representation that you pulled or someone at your direction  
2 pulled that listing off the Secretary of State's office as the  
3 most accurate and up-to-date member list?

4 MR. PARKER: I am, Your Honor.

5 THE COURT: Okay. Thank you

6 MR. PARKER: You're welcome.

7 BY MR. PARKER:

8 Q And, sir, is it fair to say that in your  
9 recollection you do not recall any other officers being  
10 designated through the Secretary of State's annual listing for  
11 Nevada Organic Remedies?

12 A Not through the Secretary of State.

13 Q Thank you. You said yesterday that you recall  
14 either yourself or perhaps people within your team having  
15 conversations or communications with the DOT. Do you remember  
16 that?

17 A That's not what I said.

18 Q What did you say, then?

19 A We received information from DOT.

20 Q Other than the Listserv did you receive any other  
21 information through any other medium?

22 MR. KOCH: Objection. Vague as to time.

23 THE COURT: Overruled.

24 THE WITNESS: Directly, I don't recall. I mean, we  
25 do -- we are in somewhat constant communication with DOT. For

1 example, when we have audits or inspections there's  
2 communication that is passed between our organization and the  
3 Department. Regarding the application process, I stated  
4 yesterday that I don't recall having any direct contact with  
5 the Department regarding the application. If certain members  
6 of our team did, I don't recall that off the top of my head.

7 BY MR. PARKER:

8 Q Okay. Have you ever spoken to Ms. Kara Cronkhite?

9 A Yes.

10 Q On how many occasions?

11 A I don't know. I would say a handful or maybe, you  
12 know, a few occasions.

13 Q Were any of those conversations -- were any or those  
14 conversations related to the 2018 application process?

15 A I don't recall.

16 Q Have you ever spoken with Mr. Damon Hernandez?

17 A I am not sure.

18 Q Let's go back to Ms. Kara Cronkhite. Were any of  
19 those conversations recorder in any fashion?

20 A I'm not aware of any.

21 Q Were any of those conversations memorialized in any  
22 written document, an email, a letter, or some type of response  
23 in a Listserv to your knowledge?

24 A They may have been. I remember seeing email from  
25 Kara I believe that was produced as part of this litigation

1 regarding the incident that we discussed yesterday at  
2 Henderson. But I'm not recalling any specific emails about  
3 the application process.

4 Q How about Mr. Gilbert, Steve Gilbert? Have you ever  
5 spoken with him?

6 A Yes.

7 Q On how many occasions?

8 A A few.

9 Q Any of it involving the 2018 application process?

10 A Not that I can recall.

11 Q Any of it dealing with -- since you mentioned,  
12 dealing with any deficiencies related to Nevada Organic  
13 Remedies?

14 A Not that I can recall.

15 Q How many deficiencies has Nevada Organic Remedies  
16 received?

17 A I'm not sure, but I don't think it's in -- I don't  
18 think we're an outlier in terms of the rest of the industry.

19 Q More or less than 10?

20 A More.

21 Q More or less than 20?

22 A More.

23 Q More or less than 30?

24 A Are you asking in the lifetime of the company?

25 Q Well, the lifetime would be, I'm thinking since 2014

1 or '15; right?

2 A Correct.

3 Q All right. Yes.

4 A Yeah.

5 Q How many?

6 A So, yeah, over the course of those years, yeah, it  
7 could be more than 30.

8 Q More than 40?

9 A Are you saying like -- let's say we have an audit  
10 and we get a letter that has two deficiencies in it, are you  
11 separating those, or are you counting that audit letter as  
12 one --

13 Q No. I'm counting those as two deficiencies.

14 A As two. Okay.

15 Q Yes, sir.

16 A All right. Then, yeah, it's probably more than 30.  
17 I wouldn't be able to quantify how many more than that, but  
18 probably not many.

19 Q Do you know whether or not that list of deficiencies  
20 were provided to or made available to the evaluators?

21 A I have no idea.

22 Q It appeared that your counsel, based upon  
23 Exhibit 96, was attempting to prevent that issue from being  
24 considered among the Nevada Organic Remedies applications. Do  
25 you have the same opinion?

1           MR. KOCH: Objection, Your Honor. Misstates the  
2 document. Also, it mischaracterizes the communication.  
3 There's no indication that Counsel's even on that  
4 communication.

5           THE COURT: Can you not make a speaking objection.  
6 Overruled.

7           THE WITNESS: Can you please ask the question again.  
8 BY MR. PARKER:

9           Q     Yes. Do you want me to bring up Exhibit 96 again  
10 just for purposes of context?

11          A     Sure.

12          MR. PARKER: Could you do that for me, Shane. Let's  
13 bring the whole thing in, Shane.

14 BY MR. PARKER:

15          Q     And if you'd like, I can provide the book for you.  
16 Can you highlight the second-to-the-last sentence of the word  
17 "banks." Starts at "These investigations." And if you can't  
18 see it, Mr. Jolley, I can grab the volume behind you and give  
19 it to you. It says, "These investigations should be removed  
20 from the log". And Kara Cronkhite is identified at the bottom  
21 of this document. Do you recall ever speaking to her about  
22 this document or about the incident that this document  
23 concerns?

24          A     No, I don't.

25          Q     Do you have an understanding why these

1 investigations should be removed from the log?

2 A I don't believe I was a party to this email. I just  
3 saw it for the first time yesterday, I believe. And so all I  
4 can do is go off of the face of the text. I don't really have  
5 any, you know, detail or inside information on this email. It  
6 says, "Please remove the investigation SODs regarding self-  
7 reported incidents," and goes on from there. So --

8 Q Do you know whether or not the 30-plus deficiencies  
9 that you were just speaking of were also removed from the log,  
10 or are they currently on log, to your knowledge?

11 A I don't have access to the State's proprietary, you  
12 know, private information.

13 Q Do you know whether or not those deficiencies were  
14 available to the evaluators?

15 A I do not.

16 Q You were on the NDA; right?

17 A Yes.

18 Q Were there any discussions or recommendations with  
19 regards to the availability of the deficiencies for a  
20 particular applicant for the evaluators?

21 A I don't recall having those discussions. It wasn't  
22 really our job to be part of that discussion.

23 Q As an NDA member did you reach out to the industry  
24 to inform them of whether or not deficiencies would be a part  
25 of the application process?

1           A     I think it was discussed a little bit here and  
2 there. I mean, I think we all assumed, I know I did, that the  
3 State would consider your compliance track record and, you  
4 know, the status of your company.

5           Q     Did any of those deficiencies concern the care,  
6 quality, or safety of marijuana from seed to sale?

7           A     I don't really know how to answer that question.

8           Q     Well, the application -- as a part of the criteria  
9 for the application the evaluators had to determine in scoring  
10 your care, quality, and safekeeping. Do you recall that?

11          A     Uh-huh.

12          Q     Is that a yes?

13          A     Yes, I do recall that.

14          Q     All right. Were any of your deficiencies related to  
15 that element or criteria?

16          A     So deficiencies are not categorized like that. So  
17 that would be a subjective, you know, call that you would have  
18 to make. I guess there could be circumstances. For example,  
19 I recall, you know, certain companies having significant  
20 issues with the State, compliance issues, and having to shut  
21 down operations.

22          Q     Right.

23          A     And so, yeah, I mean, I guess there could be  
24 situations where a deficiency -- one could construe a  
25 deficiency or adherence to a certain regulation as being, you



1 know, relevant in that general topic --

2 Q Right.

3 A -- of discussion. But I don't think that it was  
4 outlined as such in the application.

5 Q Wouldn't you agree with me that with someone with  
6 30-plus deficiencies that some of those deficiencies, yours in  
7 particular, Nevada Organic Remedies, could touch on that  
8 criteria?

9 A I believe if an operator had made serious mistakes  
10 or had been shut down by the State or something like that, it  
11 could factor into their qualification for additional licenses.

12 Q And if a applicant had 30 or plus deficiencies, some  
13 of which touching on care, quality, and safekeeping from seed  
14 to sale, wouldn't that be directly and demonstrably related to  
15 the operation of a marijuana establishment?

16 A That's not how I interpreted the application. But  
17 as I said earlier, I think, you know, a company's track record  
18 in following the regulations could be relevant when looking at  
19 issuing new licenses.

20 Q All right. Because you would agree with me that  
21 that track record, if it reflected negatively upon the  
22 applicant, the evaluators should have access to that for  
23 determining whether or not that applicant should score high in  
24 the care, quality, and safekeeping criteria. Do you agree  
25 with that?

1           A     I'm not familiar with how the State handled that  
2 particular aspect of the application process.

3           Q     All right. In terms of your communications with Mr.  
4 Gilbert you said maybe half a dozen times; is that correct?

5           A     Going back several years, if you count in-person  
6 communications, phone communications, every possible form,  
7 then, yeah, maybe, you know, a handful of communications. I  
8 don't know.

9           Q     All right. And do you ever recall any emails --  
10 strike that. Did you communicate with Mr. Gilbert by text, or  
11 only in person or by phone?

12          A     I don't recall ever texting Mr. Gilbert, but I'm not  
13 a hundred percent positive on that.

14          Q     Okay. You had his personal email -- telephone  
15 number?

16          A     I definitely have his office number. I'm not sure  
17 about his other contact information.

18          Q     All right. Were any of your communications with  
19 him, be it in person or over the phone, ever memorialized or  
20 reduced to writing and sent back to you, this is to confirm  
21 our conversation, you know, we don't care if you don't use  
22 actual locations for your application, anything like that?

23          A     I never received an email like that that I can  
24 recall.

25          Q     Okay. And I was using an example, a hypothetical.

1 But any type of written communication confirming the  
2 conversations you may have had with him?

3 A I don't recall receiving emails directly from Mr.  
4 Gilbert related to the application.

5 Q Okay. And you don't recall any of your  
6 conversations being reflected in a Listserv dissemination,  
7 either?

8 A I don't know what you mean by having my  
9 communication being sent out to a Listserv. I don't  
10 understand that.

11 Q Let's say you asked Mr. Gilbert a question regarding  
12 the application process because you needed clarification and  
13 he sent you an email saying, this clarifies our conversation,  
14 something like that.

15 A Well, I just said I don't recall ever receiving such  
16 an email.

17 Q Okay. So if you had a question regarding this 2018  
18 process that you discussed with Mr. Gilbert, Ms. Cronkhite, or  
19 Mr. Hernandez and it didn't make its way into something in  
20 written form disseminated through the Listserv, then the  
21 general public would not have that information. Is that a  
22 fair statement?

23 A Well, I think each applicant had the opportunity and  
24 the prerogative to clarify questions they may have had  
25 regarding the application. And I don't think it's the

1 Department's practice to redistribute all communications it  
2 has publicly.

3 Q Okay. So the answer to my question would be yes,  
4 Mr. Parker, the public would not gain the benefit of your  
5 discussions with the DOT through a written dissemination by  
6 the Department of Taxation; is that correct?

7 A That's not what I said.

8 Q But is that correct?

9 A I don't believe the Department has a practice of  
10 redistributing communications it has with licensees or anyone  
11 public via the Listserv.

12 Q All right. Now, do you believe that there's an  
13 advantage that you gained by being able to have these  
14 communications with the Department of Taxation employees that  
15 did not result in the public being afforded the results of  
16 those conversations?

17 A I believe every applicant had the opportunity to ask  
18 questions on an equal, level playing field. I think all  
19 applicants had at their disposal the same opportunities to ask  
20 questions and clarify issues.

21 Q That's not answering my question, sir. The question  
22 is do you believe because of your ability to have these  
23 conversations directly with the people training the trainers,  
24 or, as they say, training the evaluators, that you perhaps  
25 received information that the general public did not.

1 MR. KOCH: Objection. Lacks foundation.

2 THE COURT: Overruled.

3 THE WITNESS: No, I do not agree with that.

4 BY MR. PARKER:

5 Q Well, you had -- like you said before, you had Mr.  
6 Gilbert's direct line at his office; is that correct?

7 A It's on the Website. You can get it.

8 Q Is that correct?

9 A That I had Mr. Gilbert's office phone number?

10 Q At the very least you said that; is that correct?

11 A I did say that.

12 Q All right. And you spoke with him both in person  
13 and over the phone; is that correct?

14 A Going back to 2014 or '15, the course of my  
15 experience and relationship with him, yes, I have had --

16 Q All right.

17 A -- conversations with Mr. Gilbert.

18 Q Same with Mr. Hernandez; is that correct?

19 A I don't recall ever speaking with Mr. Hernandez.  
20 I'm not sure who that is.

21 Q And the same with Ms. Cronkhite?

22 A I met Kara during some of our first inspections back  
23 in 2015 and have had various interactions with her over the  
24 years.

25 MR. PARKER: Okay. Shane, I need you to bring this

1 up for me.

2 Your Honor, it's an admitted exhibit I'm looking  
3 for. It's the extraction report.

4 THE COURT: I don't know all the exhibits in this  
5 case, Mr. Parker.

6 Sir, I have a question on an unrelated issue while  
7 he's looking for that. And if you need time to think about  
8 the answer, just let me know. When did you learn that the  
9 Department of Taxation would be using outside contractors to  
10 review the applications under 453D?

11 THE WITNESS: I believe I learned about that leading  
12 up to the application period. I believe there was a public  
13 hearing in which Jorge Pupo may have mentioned that or some  
14 information that came out. I'm a little fuzzy on that.

15 THE COURT: So summer of 2018?

16 THE WITNESS: Yeah, that sounds about right, but --

17 THE COURT: Okay.

18 THE WITNESS: I'm pretty fuzzy on it, but yeah.

19 THE COURT: I'm looking for your best recollection.

20 THE WITNESS: Thank you. Yeah.

21 THE COURT: All right. Sorry, Mr. Parker, I was  
22 trying to use time wisely.

23 MR. PARKER: No. No worries. I have -- no worries,  
24 Your Honor. I appreciate you using the time. So I believe we  
25 have Exhibit 108, Your Honor, on the screen, which has been

1 admitted. It is the extraction report, page 32, KP32. I  
2 believe it's Exhibit 108. And I'm concerned about Item Number  
3 404.

4 BY MR. PARKER:

5 Q Can you see that on the screen, Mr. Jolley? Or can  
6 you see it on your personal screen if it's easier that way?

7 A It's not on the personal screen. I can see it on  
8 this one.

9 MR. KOCH: I think you can turn it off and on.

10 MR. PARKER: Yeah. It's the Plaskon approach to  
11 technical issues.

12 THE COURT: The marshal's going to help if you can't  
13 get it done.

14 (Pause in the proceedings)

15 BY MR. PARKER:

16 Q So this text message was taken from Mr. Plaskon's  
17 telephone. It says, "Jorge Pupo is the MED Deputy Director."  
18 Do you see that?

19 A Yes.

20 Q Okay. And you've spoken with Mr. Pupo; is that  
21 correct?

22 A Have I ever spoken with Mr. Pupo?

23 Q Yes, sir.

24 A Yes, I have.

25 Q And how many occasions?

1           A     A handful.

2           Q     All right. As many times as you've spoken to Mr.  
3 Gilbert?

4           A     I wouldn't say that. I don't know that I can, you  
5 know, directly quantify the number of conversations with both  
6 of those individuals. But, you know, it's a few. It's not  
7 hundreds, and it's not one or two. It's somewhere in between.

8           Q     Were those discussions related to the 2018  
9 application process?

10          A     I don't recall ever speaking with Mr. Pupo directly  
11 about the application process.

12          Q     I thought you just said to the Court that you had a  
13 conversation with him regarding the use of outside evaluators.

14          A     That's not what I said.

15          Q     What did you say?

16          A     Would you like me to repeat the conversation I just  
17 had with the Judge?

18          Q     Just your answer.

19          A     Okay. The question was when did I first learn that  
20 the Department was going to use outside consultants to help  
21 evaluate applications. And my general and somewhat vague  
22 recollection is that it was in the summer of 2018, leading up  
23 to the application process. And I believe, I don't know this  
24 for sure, that it may have been through something that Mr.  
25 Pupo said publicly, some kind of public statement that was



1 made. But I know that others on our team I believe had heard  
2 something similar, and we discussed that.

3 Q Okay. So it came from Mr. Pupo. You just don't  
4 know if you were a one-on-one conversation when that came up?

5 A No. I said I don't recall discussing the  
6 application process directly one on one with Mr. Pupo. I  
7 don't believe that ever occurred.

8 Q All right. But --

9 A I learned about the Department's intention to use  
10 outside consultants I believe through something that came out  
11 publicly, either a news article or a hearing, something like  
12 that. I actually don't recall.

13 Q All right. It says, "Steve Gilbert is the program  
14 manager and reports to Jorge. I report to Steve. Steve  
15 prefers to not have the world know our structure. He likes  
16 industry folks knowing, though, and addressing them". Now, if  
17 you're not in the industry, how would you get the same level  
18 of information from the DOT if you're not in the industry and  
19 you're not on the Listserv?

20 A I'm not really sure what you're inferring here.  
21 What do you mean by same information?

22 Q Fortunately, I get to ask the questions. And so let  
23 me repeat the question. Maybe you didn't understand it or  
24 maybe I need to rephrase it to make it easier for you to  
25 respond to. Do you have an understanding of what "the

1 industry" means in the context of the 2018 application  
2 process?

3 A I would assume it means people who are in the  
4 marijuana industry in Nevada.

5 Q All right. So if you're not in the medical  
6 marijuana industry in Nevada and presumably not on the  
7 Listserv, how would that person, that member of the public,  
8 get the same information that you're getting for purposes of  
9 preparing your applications?

10 A It's up to that person and what they're looking for  
11 and how resourceful they are. They can go to the Department's  
12 Website, they can call the Department, they can attend, you  
13 know, hearings and meetings, can read through the various  
14 materials that are available through the Department's Website.

15 Q Would you agree with me that there's an advantage to  
16 being the president of the NDA and having the ability to  
17 contact these people personally, the DOT people that we --

18 A No, I would not agree with that.

19 Q All right. Yesterday you were discussing locations  
20 with Mr. Kemp and I think to some extent Mr. Cristalli. Do  
21 you recall that?

22 A Yes.

23 Q All right. And you -- as a part of that discussion,  
24 you indicated I believe in part of your answer the impact to  
25 the community based upon the location. Do you recall that?

1 Or did I misunderstand what you were saying?

2 A I generally remember that topic of discussion.

3 Q Do you recall that the application required you to  
4 identify the maximum square footage that you had utilized? Do  
5 you remember that?

6 A I believe the application called for a floor plan,  
7 and there was some language in there about the size and  
8 adequacy of the proposed floor plan.

9 Q And do you have -- it's my understanding you used a  
10 -- I think Mr. Kemp said a generic floor plan; is that  
11 correct?

12 A That was his term.

13 Q But it was your -- the floor plan that you currently  
14 use; is that correct?

15 A That's not what I said.

16 Q Is it the floor plan that you currently use that you  
17 wanted to replicate in different locations?

18 A I said it was based on the floor plan and there were  
19 some tweaks that were made.

20 Q Okay. But I thought that some of those tweaks would  
21 come after you actually found a location. Is that correct or  
22 incorrect?

23 A Those are not mutually exclusive issues you're bring  
24 up.

25 Q All right. So that's -- we can address them

1 individually. Was it your intention to make tweaks to a floor  
2 plan that you generally use right now based upon each  
3 location?

4 A We used -- we started from our existing floor plan  
5 of one of our stores and then made some minor modifications to  
6 that and included that in our application, because we felt  
7 that it supported the idea that we could use that floor plan  
8 and knew how to function as a company in this particular flow  
9 and layout in a way that would best serve the needs of the  
10 community.

11 Q If you don't have a location, just a floor plan, how  
12 do you know that you will be able to convince a landlord or an  
13 owner to allow for that floor plan or tweaks to that floor  
14 plan after you enter a lease?

15 A Well, first, I've done that before, and so I had  
16 confidence that I could do it, again. Secondly, in retail  
17 there's pretty standard dimensions for retail buildings, and  
18 so we felt that it was not unreasonable to base future stores  
19 on our current store design with some minor modifications. Of  
20 course things like the location of electrical panels and  
21 drains and plumbing fixtures might need to be tweaked a little  
22 bit based on the individual needs of the building.

23 But I don't think that's what the intention of the  
24 application was. I think the intention of the section of the  
25 application was for the State to get an idea of how a company

1 would operate to serve the needs of the community. And I  
2 think we did an excellent job of demonstrating that.

3 Q So if that's the case, if the State only wanted an  
4 idea, they could have said, please simply provide floor plans.  
5 That could have been the request in the application. Didn't  
6 have to do anything with building size or location, just  
7 provide floor plans; right?

8 A I'm not in a position to speculate on the  
9 Department's intentions or strategies behind the application.  
10 I just know what the application requested, and I know, you  
11 know, generally what we did to respond to that section.

12 Q Well, you gave me your interpretation of what the  
13 application required. That's why this conversation started,  
14 when I asked you about your floor plan. And you said it was  
15 based upon your interpretation of the application this is what  
16 the DOT was looking for. So I'm trying to figure out how you  
17 move from what the words -- the four corners of the  
18 application says, building size, adequacy, all of those  
19 things, how do you jump from that to simply saying a floor  
20 plan was sufficient and why in the heck you would get such  
21 high scores when the application doesn't say, give me floor  
22 plans. If that was the case then everybody could have just  
23 provided floor plans. But the application talks about  
24 building size and adequacy, not just simply floor plans. So  
25 what made you think that you were simply -- or you were

1 providing adequate information when it says more than, just  
2 give me a floor plan?

3 A You lost me. There's many questions in that  
4 diatribe/statement/question, so I really don't know how to  
5 answer that.

6 Q Let me see if I can break it up for you.

7 A Okay.

8 Q Is there any -- did you receive any information from  
9 the DOT that said simply providing a floor plan would be  
10 adequate in a response to building size, adequacy of building,  
11 the actual requirements of the application?

12 A We went off what was stated in the application.

13 Q You didn't receive any additional information from  
14 anyone at the DOT?

15 A Members of our team may have received certain  
16 clarifying, you know, information, but I don't recall  
17 receiving any direct communication from the DOT regarding the  
18 application process.

19 Q And is it fair to say, sir, that you had no  
20 conversations or any LOIs -- let's start here. Did you have  
21 any LOIs in terms of lease space for any of these locations,  
22 the eight or so applications you submitted?

23 A We did not provide letters of intent in our  
24 application.

25 Q And you had no other type of agreement related to a

1 location that you provided with your application; is that  
2 correct?

3 A I don't know what you mean by other type of  
4 agreement.

5 Q Well, did you have perhaps earnest money on a piece  
6 of property that you intended to buy to build a building?

7 A We own and are developing several retail properties  
8 in various locations and jurisdictions that we felt would be  
9 potential candidates should we receive a provisional license.  
10 But following the instructions in the application, we did not  
11 provide, you know, leases or letters of intent regarding  
12 proposed locations.

13 Q Did you provide any building plans, or simply a  
14 floor plan?

15 A We provided a great deal of detail about the  
16 proposed layout and flow and processes within the proposed  
17 locations.

18 Q Let me be more precise. Did you provide  
19 construction drawings?

20 A I do not believe we provided construction drawings.

21 Q Did you provide a security plan that included some  
22 type of contract or anything showing what would be placed on  
23 that floor plan?

24 A Yes, I believe we did.

25 Q And did that also identify for purposes of outdoor

1 security devices, cameras, where you anticipated those  
2 locations to be? So, for example, a floor plan would not  
3 necessarily indicate windows to the exterior, it may just have  
4 walls without showing where windows would be. Understand?

5 A I understand what you're saying, but I'm not sure  
6 that's what we did.

7 Q If you had windows perhaps you may want more  
8 security near windows; is that correct?

9 A It really depends on the layout of the building. I  
10 can't really comment on a -- in that kind of hypothetical.

11 Q And I appreciate that. And you're actually helping  
12 me go where I wanted to end. Without that information the  
13 actual building layout -- a floor plan by itself would not  
14 indicate or provide a reader or an evaluator a full complement  
15 of what would be required for that establishment, because you  
16 don't know what building it's going to be placed on, you don't  
17 know if it's going to be first floor, the second floor, you  
18 don't know if it's in the -- next to -- adjacent to an alley.  
19 I mean, none of those things were a part of your application;  
20 is that correct?

21 A Are you asking if we indicated where potential  
22 alleyways would be in our application?

23 Q Yes, sir.

24 A I don't recall specifically discussing alleyways,  
25 no.



1 Q You didn't particularly describe where windows would  
2 be, either, did you?

3 A I'm not sure. I'd have to go back and look.

4 Q You didn't describe first floor or second floor?

5 A I don't recall discussing floors.

6 Q Strip mall --

7 A All of our locations are on ground floors.

8 Q Strip mall or stand alone, none of that stuff was  
9 identified; right?

10 A We did not discuss strip malls in our application  
11 that I can recall.

12 Q Or stand-alone buildings?

13 A I don't recall.

14 MR. PARKER: Good enough.

15 Thank you, Your Honor.

16 THE COURT: Anyone else for the plaintiffs' side?

17 Any other defendants or the State wish to inquire before I go  
18 to redirect?

19 MR. SHEVORSKI: Nothing from the State, Your Honor.

20 THE COURT: Redirect.

21 REDIRECT EXAMINATION

22 BY MR. KOCH:

23 Q Well, Mr. Jolley, I told you you'd be done by 2:00  
24 yesterday. I hope you're done by 2:00 today. Try to get you  
25 there. You've had a lot of conversation and discussion about

1 diversity and officers and the impact on diversity, a couple  
2 discussions with Mr. Kemp and Mr. Cristalli and Mr. Parker.

3 A Yes.

4 Q Did you know what NOR's diversity score was before  
5 yesterday?

6 A I did not.

7 Q And for all the noise and discussion that's been had  
8 here today and yesterday, do you know what the impact of the  
9 diversity score for NOR was for NOR receiving or not receiving  
10 a license?

11 A I'd have to do the math to work it out, but I don't  
12 think it would have changed the outcome of the licenses that  
13 we received.

14 Q You understood that NOR -- 8 points, is that the  
15 figure that NOR received for diversity?

16 A Yes.

17 Q All right. Let's look at Exhibit 5004, please. I  
18 should put it up on the screen here. It'd probably be the  
19 easiest way to do that. You may need to turn your screen off  
20 and on again switching over. Is it up on yours?

21 A It's working, yep.

22 Q All right. So 5004, this is a list of the  
23 applicants that received a license and those that didn't and  
24 all the scores for each of those applicants. Have you seen  
25 this before?

1           A     Yes.

2           Q     Okay.  Let's look down at Las Vegas, which is the  
3 bottom of that first page, I believe.  Las Vegas highly  
4 contested market here.  And we have -- NOR is Number 2; is  
5 that right?

6           A     Yes.

7           Q     And NOR received 8 points for diversity?

8           A     Yes.

9           Q     If we took away 8 points from NOR, what place would  
10 NOR fall to?

11          A     Looks like we would have been fifth place.

12          Q     Okay.  So you'd be below Cheyenne, above Lone  
13 Mountain; is that right?

14          A     Correct.

15          Q     Let's look right above that.  Henderson, the same  
16 page.  NOR comes in second, again.  Do you see that?

17          A     Yes.

18          Q     And if we took away those 8 points for diversity,  
19 where does NOR end up?

20          A     That would have been 214.99.  So I think that would  
21 have put us at fourth place.

22          Q     And we can go through this exercise for all of the  
23 seven licenses that NOR received.  I've done it.  We can do it  
24 if the Court would like.  But are you aware of any  
25 jurisdiction where NOR would have lost its license if all of

1 the diversity points given to NOR were taken away?

2 A No.

3 Q And can you turn to Exhibit 70, please. You weren't  
4 here when the cannabis law expert testified the first day of  
5 this hearing were you?

6 A I was not.

7 THE CLERK: In sorry, 70?

8 MR. KOCH: 70.

9 THE CLERK: That's proposed.

10 MR. KOCH: You have no problem with 70, your  
11 expert's report?

12 MR. KEMP: What is 70?

13 MR. KOCH: The expert's table of listings of taking  
14 diversity out. It's your exhibit.

15 MR. KEMP: I thought that wasn't -- I don't have any  
16 problem.

17 THE COURT: Are you okay admitting it?

18 MR. KEMP: Yeah, I'm fine, Your Honor.

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

20 (Plaintiffs' Exhibit 70 admitted)

21 MR. KOCH: Let's put Exhibit 70 up.

22 THE COURT: 70's admitted.

23 BY MR. KOCH:

24 Q Exhibit 70 was a calculation that this expert came  
25 up with where he took diversity away for all applicants in

1 unincorporated Clark County. Where does NOR end up?

2 A Looks like first place.

3 Q Let's go to 71.

4 MR. KEMP: Not a problem.

5 THE COURT: Any objection to 71?

6 MR. KEMP: No, Your Honor.

7 THE COURT: 71 be admitted.

8 (Plaintiffs' Exhibit 71 admitted)

9 BY MR. KOCH:

10 Q 71, same thing for Las Vegas. Where does NOR end up  
11 if it takes out diversity?

12 A First place.

13 Q All right. So, long and short, there's a lot of  
14 discussion about this, you know, putting officers in, taking  
15 officers out for purposes of diversity based on the arguments  
16 that are made. Did NOR have any benefit from diversity even  
17 being considered in this process?

18 A Not that it appears. I mean, we just did our best  
19 to have a thorough and accurate application listing the people  
20 we felt were responsive to the application.

21 MR. KOCH: I'd like to propose Exhibit 5027. Do you  
22 guys have any objection to the ownership officer letter?

23 MR. KEMP: That was the one -- I have no objection  
24 if these guys --

25 MR. KOCH: Dominic, do you have any objection, 5027,

1 the ownership letter we have from the State --

2 MR. GENTILE: No. You showed that to me this  
3 morning. Is that the one?

4 MR. KOCH: Yeah.

5 THE COURT: 5027 be admitted.

6 (Defendants' Exhibit 5027 admitted)

7 MR. KOCH: Do you have a binder clipped with 27?  
8 Does he have a --

9 THE CLERK: I still have it, Mr. Koch.

10 MR. KOCH: If I can approach.

11 THE COURT: Would you like to approach so you can  
12 take it over to the witness? That'd be great.

13 Sir, this now has a sticker on it. It's important I  
14 get it back, so don't walk out with it.

15 THE WITNESS: You got it.

16 THE COURT: Thank you.

17 THE WITNESS: Uh-huh.

18 BY MR. KOCH:

19 Q Mr. Jolley, yesterday we looked at the first couple  
20 of pages of 5027, because there's some question about the  
21 ownership being disclosed. First the department of Taxation  
22 letter, the August 20th letter, we looked at that. I think  
23 that was with another exhibit that we also admitted  
24 separately. So we're going to move past that. I'd like you  
25 to look at Bates Number 1591. It should be the fourth page in

1 this document. Connor & Connor, did that law firm represent  
2 NOR for purposes of part of this process?

3 A Yes.

4 Q And this letter here, do you recognize this letter?

5 A Yes.

6 Q What is it?

7 A It's a letter from Amanda Connor, our attorney, to  
8 Kara Cronkhite at the Department notifying her of certain  
9 individuals that are officers within NOR, Nevada Organic  
10 Remedies.

11 Q All right. It says the following people have been  
12 made officers at NOR, and it lists all those individuals,  
13 including the individuals that have been talked about here as  
14 director of retail, director of Human Resources, et cetera.  
15 Did you ever get anything back from the Department saying,  
16 we're not going to count those people as officers, after they  
17 were notified of this information?

18 A No. Not that I can recall, no.

19 Q Let's turn two pages further into that document,  
20 1593, another letter sent one week later, September 7th, 2018.  
21 And have you seen this letter before?

22 A Yes.

23 Q Okay. Another letter from Ms. Connor to the  
24 Department saying, the following people are current officers,  
25 again; is that right?

1           A     That's correct.

2           Q     Now, here's an additional on the bottom. It says,  
3 "The following individual is hereby added as an officer, Dan  
4 Zarrella, Director of Marketing". Mr. Zarrella, what's his  
5 race and gender?

6           A     White male.

7           Q     So after the list of officers was first provided to  
8 the Department Nevada Organic Remedies supplemented that to  
9 list a white male as an officer?

10          A     Yes, that's correct.

11          Q     Pretty stupid thing to do if you're trying to get  
12 extra diversity points; isn't it?

13          A     Yesterday Mr. Kemp made the assertion that we were  
14 trying to, you know, somehow throw these people in just to  
15 increase our diversity score. This clearly refutes that  
16 argument. Dan had just been promoted to the -- as an officer  
17 in the company, a director of Marketing. And so we felt it  
18 was necessary to add him to the application to provide a  
19 thorough understanding to the Department of who the people are  
20 who are actually running the company.

21          Q     If we go back to Exhibit 5025. I'm just going to  
22 pull up the organizational chart. The second page of 5025 is  
23 Bates Number 1427. And down below on that bottom section  
24 there are all of the officers that Nevada Organic Remedies  
25 listed, including the directors and the other individuals that



1 have been talked about at some length here. Let me just ask.  
2 Brandon Wiegand, what's his diversity score? What's his race  
3 and gender?

4 A He is a white male, so I don't think he would add  
5 any points to the diversity score.

6 Q Ed Kistner?

7 A Same.

8 Q Kent Kiffner?

9 A Same.

10 Q Dan Zarrella?

11 A Same.

12 Q Steve Little?

13 A Same.

14 Q What about Kim Lester?

15 A Kim Lester is a female.

16 Q All right. And what about Courtney Barker?

17 A Also a female.

18 Q And what about Chris Vickers?

19 A Male. White male.

20 Q And Jeanine Terrance?

21 A Female.

22 Q So you listed everyone that you believe to be an  
23 officer of the company irrespective of their race or gender;  
24 is that right?

25 A That's correct.

1 Q You believe that you provided a full and complete  
2 disclosure to the Department of Taxation as part of your  
3 application?

4 A Yes.

5 Q And when you or NOR wrote those letters to the  
6 Department on August 31st and on September 7th did the  
7 Department ever come back and tell you that that was improper  
8 or not an actual list of the officers?

9 A No.

10 MR. KOCH: Proposed Exhibit 5028, that was a page  
11 from our operating agreement. Any objections?

12 Dominic?

13 THE COURT: Any objection?

14 MR. GENTILE: No, Your Honor.

15 THE COURT: Be admitted.

16 (Defendants' Exhibit 5028 admitted)

17 BY MR. KOCH:

18 Q And 5028 is part of the application that went to the  
19 State based upon the Bates numbers here. It's a page from  
20 NOR's operating agreement; is that right?

21 A Yes.

22 Q And I want to call your attention to 2.4(a), which  
23 talks about the appointment, resignation, and removal of  
24 officers. It says, "Appointment. The managers may from time  
25 to time elect or appoint officers. Officers of the company

1 may have such titles as the corresponding officers of the  
2 corporation incorporated under the laws of the state of Nevada  
3 or such other titles as the board of managers shall determine,  
4 and as such have powers and duties as set forth in this  
5 agreement or approved by the managers." When you indicated  
6 that those individuals we've looked at were officers of the  
7 company did you believe that they were properly designated as  
8 officers pursuant to the operating agreement of the company?

9 A Yes.

10 MR. KOCH: Go to Exhibit 5036. I think we're -- no  
11 objection to that ETW exhibit. And 5037 while you're at it.

12 THE COURT: Any objection?

13 MR. KEMP: Not from me, Your Honor.

14 MR. GENTILE: No, Your Honor.

15 THE COURT: Be admitted.

16 (Defendants' Exhibit 5036 admitted)

17 BY MR. KOCH:

18 Q A couple of questions about this exhibit. First of  
19 all, 5036 is a document Bates stamped ETW, it's document ETW.  
20 Have you seen this document before, this actual paper version  
21 of the document before this proceeding?

22 A No.

23 Q Okay.

24 A Well, I may have been on the -- the paper version,  
25 no. I may have been on this distribution list. I don't

1 recall specifically this email. But I have not seen the paper  
2 before now.

3 Q Yeah. We've talked quite a bit about this Listserv.  
4 There's a lot of discussion about the Listserv, and this  
5 purports to be from the Listserv at listserv.state.nv.us. Is  
6 that where the Listserv communications came from, from the  
7 Department?

8 A I believe so, yes.

9 Q Okay. And this email that apparently was sent  
10 Monday July 30th, 2018, to the State MME at  
11 listserv.state.nv.us, do you know if that was part of the  
12 Listserv that the Department would send communications to?

13 A Yes, it appears so.

14 Q State MME, would that be -- do you know if everybody  
15 who had a marijuana certificate, medical marijuana certificate  
16 would have been part of that Listserv?

17 A I would assume so. Again, I don't know the inner  
18 workings of the State's list, but based on the name I would  
19 assume that it's at a minimum all of the required points of  
20 contact for all of the different licensed companies in the  
21 state.

22 Q Okay. And this email states, "To all retail store  
23 license applicants. The Division has made important  
24 clarifications to the application for the upcoming September  
25 retail store application. The following pages of recreational

1 marijuana establishment license application, recreational  
2 retail marijuana store only, have been edited". So were you  
3 aware that the State -- the Department was making  
4 clarifications to the application at this time?

5 A Yes.

6 Q Let me ask you first about the item under page 17,  
7 where it says page 17, "Added to the first row of the Nevada  
8 Recreational Marijuana Application criteria, 'including key  
9 personnel'", So was that an addition that the State made?

10 A Yeah, that was an addition to the organizational  
11 structure of the company section of the application.

12 Q All right. Hold that first page. We're going to  
13 turn to -- because with this email there's first on the third  
14 page that has an official announcement that went out.

15 A Yes.

16 Q Have you seen that official announcement before?

17 A Yes.

18 Q Okay. That official announcement has the same text,  
19 it looks like. Do you see that, page 17, the same "including  
20 key personnel"?

21 A Yes, I see that.

22 Q Okay. And then let's turn to the application that  
23 was attached to that Listserv email. And we'll turn to page  
24 17 of 34, which is Bates Number ETW43. And let me know when  
25 you're there.

1           A     I'm there.

2           Q     Okay. The change that they reference there,  
3 "including key personnel," where's that listed on this  
4 document that you see here?

5           A     So it would be the top box under the heading where  
6 it says, "The description of the proposed organizational  
7 structure," and goes on from there and indicating to the right  
8 the number of points allocated to that section of the  
9 application.

10          Q     So let me finish that. You said, "The proposed  
11 organizational structure of the proposed marijuana  
12 establishment and information concerning each owner, officer,  
13 and board member, including key personnel, of the proposed  
14 marijuana establishment". Did you understand based upon this  
15 information communicated by the Department to the entire  
16 Listserv that you were to include key personnel as part of  
17 your application?

18          A     Yes.

19          Q     And did you do that?

20          A     Yes.

21          Q     The individuals we've looked at, were they part of  
22 your key personnel?

23          A     Yes.

24          Q     While we're on this document -- I guess exhibit,  
25 before we leave it let's go back to the beginning of the

1 email, second page of that document where it talks about page  
2 21 and 29. Do you see that at the top?

3 A Yes.

4 Q Okay. And on each of those it says that the  
5 Department added "if applicant owns property or has secured a  
6 lease on property or has a property agreement." See that  
7 spot?

8 A Yes.

9 Q Okay. What did you understand was being changed on  
10 the application pursuant to this portion of the communication?

11 A It's clear that the location is optional.

12 Q Okay. Let's actually turn to that page 21, which is  
13 Bates Number ETW47. Let me know when you're there.

14 A I'm there.

15 Q Okay. And in that top box, I think we've looked at  
16 it I don't know how many times in this proceeding, but I guess  
17 the second box, "Marijuana establishment's proposed physical  
18 address." And then it goes on to say, "if the applicant owns  
19 property or a secure lease or the property agreement," was  
20 that a change from the prior version of the application as you  
21 understood it?

22 A It appears to be, yes.

23 Q Okay. Now, here's an interesting -- and so this is  
24 an email ETW produced in this case; right?

25 A Yes.

1           Q     I guess you don't know that, but it's an ETW Bates  
2 number so we'll assume it is.

3                 Let's go to Exhibit 5037.

4                 THE COURT: Any objection to 5037?

5                 MR. KEMP: No, Your Honor.

6                 MR. GENTILE: No, Your Honor.

7                 THE COURT: Be admitted.

8                 I thought you nodded no, Mr. Gentile.

9                 MR. GENTILE: Yes, I --

10                THE COURT: Yes, you have no objections?

11                MR. GENTILE: Yes, Mr. Cristalli has no objection.

12                It's his witness.

13                THE COURT: Okay. All right. Thank you, Mr.  
14 Gentile.

15                Mr. Cristalli, no objection. It'll be admitted.

16                MR. CRISTALLI: Thank you, Your Honor.

17                         (Defendants' Exhibit 5037 admitted)

18                BY MR. KOCH:

19                Q     All right. 5037 is a section from the ETW  
20 application that they have submitted in this case. Now, does  
21 it surprise you that ETW, who submitted that email with the  
22 Listserv with the new application with the information -- the  
23 new phrasing on there, filed an application that they've  
24 called the old version of the application even after they  
25 received the new version of the application?



1           A     Yes, this is very surprising. It appears that they  
2 received the correct application form, an updated application  
3 form on July 30th, '18, yet they appear to have used the old  
4 version of the application when they actually submitted it.

5           Q     Do you have any idea why they did that?

6           A     I don't, no.

7           Q     Did the Department come out to each applicant's  
8 address and in person tell them which application to fill out?

9           A     No.

10          Q     Did it help them fill out the applications, you  
11 know, put their pen to paper, anything like that?

12          A     No.

13          Q     All right. And so there's some applicant  
14 responsibility to obtain the information and submit the  
15 correct application; is that right?

16          A     Absolutely.

17          Q     There was some talk about this public ownership  
18 question, and you said that you did not believe that every  
19 owner of a share in a public corporation needed to be listed  
20 as part of the application; is that right?

21          A     That's correct.

22          Q     Has anything that you've heard here during this  
23 proceeding changed your mind on that?

24          A     No.

25          Q     You also testified I believe when Mr. Kemp asked you

1 that you'd expected the rules to be applied evenly and fairly  
2 to all applicants. Is that what you believe?

3 A Yes.

4 Q Do you know of any other publicly owned companies  
5 that are perhaps represented in this case today?

6 A There are a number of plaintiffs who are public  
7 companies.

8 Q MM Development, for example, Mr. Kemp's client, are  
9 they publicly owned?

10 A Yes.

11 Q Would it surprise you if MM Development did not list  
12 every shareholder of their stock in their application?

13 A It wouldn't surprise me. I don't think that was  
14 required in the application.

15 Q And based on my review of the information, MM  
16 Development appeared to have approximately 70 million shares  
17 outstanding, 30 percent of those are -- approximately are  
18 referenced as being held by the public. So 21 million shares  
19 of that stock, do you believe that all 21 million shares of  
20 that stock should be listed with the Department of Taxation?

21 A I don't believe that was a requirement for the  
22 application.

23 Q I looked yesterday, MM Development, and Mr. Kemp can  
24 correct me if I'm wrong, for Planet 13 Holdings had 494,000  
25 shares of ordinary stock change hands yesterday. Would it

1 surprise you if not all those shares of stock were listed with  
2 the Department of Taxation as new owners, whoever purchased  
3 those?

4 A It would not surprise me.

5 Q Do you think that would be a reasonable requirement  
6 for the Department to have to require all of those shares of  
7 stock to be listed each time they traded hands?

8 A No, I don't think it would be reasonable.

9 Q And what about each owner of a share of stock to  
10 file an agent card with the Department? Do you expect that  
11 those owners are doing that?

12 A No, I don't think it's a requirement, and I think it  
13 would be a logistical nightmare for the State and it would  
14 make the option of being a publicly traded company completely  
15 invalid.

16 Q And obtaining an agent card, what does that entail?

17 A It entails getting fingerprints, filling out a form  
18 with the State, submitting it to the State.

19 Q And is there a fee?

20 A Yes.

21 Q Each of the officers, owners, or board members that  
22 NOR listed in its application, did they each have an agent  
23 card?

24 A Yes.

25 Q What about Serenity Wellness, which is Oasis,

1 represented by Mr. Cristalli? Do you know if they're  
2 publicly traded?

3 A Yes. I believe they were acquired by a publicly  
4 traded company.

5 Q CLS Holdings USA, looks like they're the publicly  
6 traded entity. Have you heard of that entity?

7 A Sounds right. Yes, I've read the press releases.

8 Q Would you expect CLS Holdings or Serenity or  
9 whatever entities are in there to list every shareholder of  
10 that entity as part of the application?

11 A No.

12 Q You don't think that would be like a fair thing to  
13 do?

14 A I don't think it was called for in the application.  
15 I don't think it would be logistically possible to do that.

16 Q And I guess we can go on and on, but just one more,  
17 Livfree Wellness the dispensary. Do you know if they are  
18 publicly traded?

19 A I think they were actually acquired during the  
20 application period by a publicly traded company.

21 Q Cannabis Strategies Acquisition Corp., does that  
22 name ring a bell?

23 A Sounds about right.

24 Q Do you know if Cannabis Strategies Acquisition Corp.  
25 listed all of its shareholders as part of Livfree Wellness's

1 application?

2 A I don't know if they did or not.

3 Q Would you fault them if they did not list those  
4 shareholders?

5 A No, I wouldn't.

6 Q And what about the Department? Would you fault the  
7 Department for not requiring a list of each of those  
8 shareholders of all those public companies?

9 A No, I don't think that's a requirement.

10 Q Just one last area. So there's a lot of talk about  
11 building plans and what was submitted and what was not, and  
12 Mr. Kemp asked you some questions about submitting a  
13 photograph of an existing location as part of that building  
14 plan. If you had -- if NOR had just submitted a photo of its  
15 existing stores and sent that in as its building plan, what do  
16 you think the score would have been?

17 A Not a very good score. I don't think that was what  
18 the application was calling for. And I don't know if that  
19 would be identifiable information.

20 Q Right. Because the building plan, was that part  
21 identified or non-identified?

22 A Non-identified.

23 Q So if you take a picture of your store and it says  
24 the source on the outside, kind of identifying your location?

25 A I mean, even seeing the building could potentially

1 be identifiable given the fact that, you know, all the  
2 dispensaries in the state have been audited and inspected  
3 numerous times by, you know, members of the Department.

4 Q And so there was more than just a photograph that  
5 needed to be submitted for a building plan; is that right?

6 A Yes.

7 Q You haven't reviewed -- have you reviewed anybody  
8 else's building plans that were submitted in this case?

9 A No.

10 Q And do you know of any -- strike that. John Ritter  
11 when he was here -- were you here for his testimony?

12 A I was not.

13 Q You're familiar with who Mr. Ritter is?

14 A Yes.

15 Q Do you work with him?

16 A I have, yes. He was -- he's on the board of the  
17 NDA, and he and I worked pretty closely together over the  
18 years.

19 Q He testified that he expected the Department to come  
20 out and do an inspection of his current location as part of  
21 the application process. Did you have any expectation of an  
22 inspection of that sort?

23 A No. And we're inspected regularly, but I don't  
24 believe that was in the application, nor do I believe there  
25 was an expectation of inspections as it would relate to the

1 application process.

2 Q And do you -- based on any communication discussed  
3 with Mr. Ritter, do you believe that he truly had an  
4 expectation that there would be an inspection of his location  
5 as part of the application process?

6 A He and I never discussed that. I never heard that.

7 Q What about in-person interviews? Did those ever  
8 take place as part of the application process?

9 A In-person interviews from the State?

10 Q Right.

11 A Not to my knowledge.

12 Q What about the State conducting background research  
13 on your company or anybody else's company? Did you expect  
14 them to do that?

15 A Well, they certainly requested all that information  
16 in the application, and what they did with it after that I was  
17 not privy to. I wouldn't be surprised if they performed, you  
18 know, background check and research and due diligence on the  
19 applicants.

20 Q Okay. And so what was in the application, that's  
21 what you expected to be scored?

22 A Correct.

23 Q I've got one other exhibit that I wanted to ask you  
24 a couple of questions about. 5039, part of our score sheet.

25 MR. KOCH: Any objection to 5039?

1 THE CLERK: I only have up to 5038.

2 THE COURT: 5039, we'd love to admit it, but we need  
3 a copy.

4 MR. KOCH: You know, it is 5038 I think. I'm  
5 looking at my --

6 THE COURT: So would you like us to admit 5038?

7 MR. KOCH: Let's do 5038.

8 THE COURT: Everybody okay with that?

9 MR. KOCH: It looks like my secretary ran out of  
10 tabs.

11 THE COURT: Be admitted.

12 (Defendants' Exhibit 5038 admitted)

13 MR. GENTILE: No objection from ETW.

14 BY MR. KOCH:

15 Q Okay. Exhibit 5038 is a part of the handwritten  
16 score sheets that the State has produced in this case. Have  
17 you ever seen this document before today?

18 A No.

19 Q That ID on the top is RD215. I think we've  
20 established that's NOR; is that right?

21 A Yes.

22 Q And my understanding is these are handwritten  
23 comments by an evaluator for NOR's application for the  
24 organizational structure section of its application. And we  
25 see a lot of handwriting that's listed there. In fact, it has



1 -- if we look in the comments section about halfway down, top  
2 says 22OROFBN. Do you see that?

3 A Yes.

4 Q Okay. And then it talks about owners, officers, key  
5 employees, and advisors on Point Number 1?

6 A Yes.

7 Q So based upon this does it appear that the  
8 evaluators considered owners, officers, key employees and  
9 advisors as part of the process?

10 A Yes, it does.

11 Q Okay. And I really just want to look at the last  
12 page, the third page of this document where it talks about the  
13 educational achievements of the persons who are proposed to be  
14 owners, officers, and board members of the proposed marijuana  
15 establishment, and it has a description there. Do you see  
16 that?

17 A Yes.

18 Q It says, "Collectively, owners, officers, and board  
19 members have over 100 years of secondary education," lists  
20 some of the degrees there. But below is what I want to call  
21 your attention to. It says, "No college listed." Do you see  
22 that?

23 A Yes.

24 Q So that's Ms. Lester, Ms. Sicz, Mr. Stout, and Mr.  
25 Zarrella. Are those the names that are there?

1           A     Yes.

2           Q     So you have four without degrees as part of the  
3 educational. Ms. Lester we identified as a woman; right?

4           A     Yes.

5           Q     Sicz is a woman?

6           A     Yes.

7           Q     Mr. Stout, he's African-American male?

8           A     Yes.

9           Q     Mr. Zarrella's a white male?

10          A     Yes.

11          Q     So because of those individuals not having college  
12 degrees listed, it appears that NOR got a 4 instead of a 5 on  
13 this section of the application; is that right?

14          A     Yes.

15          Q     And so is it fair to say the listing of the  
16 officers, board members, and directors and owners that NOR  
17 provided kind of cuts both ways, might provide some diversity  
18 points, but might cut back on educational points? And if we  
19 looked at everything else there might be other factors that  
20 were weighed in there?

21          A     Yes, I would agree with that.

22          Q     And when you submitted your application did you have  
23 any idea how each of these factors would be assigned points in  
24 relation to every single person that was being submitted?

25          A     No, I didn't. I just knew what the application

1 called for, and we did our best to be responsive, thorough,  
2 and accurate.

3 Q If anything, perhaps there's overdisclosure rather  
4 than underdisclosure; is that right?

5 A Well, I would certainly err on overdisclosure and  
6 providing as much information as possible that we felt was  
7 relevant to the application.

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

9 THE COURT: Anything further?

10 Thank you, sir. We appreciate your time. Sorry you  
11 had to come back today. Have a nice trip.

12 MR. KEMP: Judge, what about our recross on the new  
13 errors he brought up?

14 THE COURT: How long?

15 MR. KEMP: I only have two questions.

16 MR. CRISTALLI: I have five minutes, Your Honor.

17 THE COURT: I'm timing you.

18 Sit down.

19 I'm timing you. It's 10:50.

20 MR. CRISTALLI: Okay. Thank you, Your Honor.

21 RECROSS-EXAMINATION

22 BY MR. KEMP:

23 Q Mr. Jolley, you just said that Livfree should have  
24 listed its public company affiliations with its application;  
25 right?

1           A     Can you say that again, please.

2           Q     You just told Counsel that you thought Livfree  
3 should list its public company affiliations on the application  
4 they filed in September?

5           A     What's public? I don't know what public company  
6 affiliations --

7           Q     You just said that Livfree, my client, was acquired  
8 by a public company and they should have put that on the  
9 application? You just told the Court that.

10          A     I don't believe that's what I said.

11          Q     Okay. You know that Livfree wasn't acquired by a  
12 public company until the week before last. You know that;  
13 right?

14          A     No, I didn't know that. I knew that it was in  
15 process for several months. There were press releases that  
16 came out, you know, middle or end of last year.

17          Q     It is June of 2019 now. The application was filed  
18 in September of 2016. Livfree didn't have any obligation to  
19 disclose a public purchase that hadn't been negotiated and  
20 hadn't been closed, did they?

21          A     I'm not aware of the detail of the timing of the  
22 transaction.

23          Q     So as we're sitting here today you don't know if  
24 Livfree did any right or wrong according to Counsel's  
25 questions at all, do you?

1           A     Yeah. I'm just going off of information that I've  
2 gleaned from press releases and other, you know, information.

3           Q     Okay. And let's talk about the MM Development  
4 application. If I told you that MM actually filed shareholder  
5 disclosures for Planet 13 Holdings, any shareholder that was  
6 around 4 or 5 percent, is that news to you?

7           A     I'm not aware of the details of their application.

8           Q     Okay. But you didn't do that, did you? You didn't  
9 list the shareholders of 4 or 5 percent of your [inaudible],  
10 did you?

11          A     We listed everyone that we felt the application  
12 called for and the statutes called for.

13          Q     And you didn't list the 30 percent owner that I  
14 referenced yesterday on the board, the J whatever it was, and  
15 you didn't list the other one. You didn't file any disclosure  
16 of those?

17          A     We listed everyone that the application called for.

18          Q     Okay. But if MM Development listed 4 or 5 percent  
19 owners of its holding company, they went above and beyond what  
20 you did; right?

21          A     I don't know. I'm not in a position to make that  
22 judgement.

23          Q     Okay. And then you took the shot at MM for just  
24 supposedly listing photos of their store in their application.  
25 You know that's not true; right? You know that's not true.

1           A     I'm not familiar with their application.

2           Q     Okay. They actually put in the building plan for  
3 the location that they'd been operating for years, as well.  
4 And in addition they put photos. It wasn't a case where they  
5 just put photos. You know that, don't you?

6           A     No, I don't know that.

7           Q     Okay. Well, if that's the case, you would agree  
8 with me that photos and a building plan for an existing  
9 building that had been operated for years would be the best  
10 proof possible that you could build a building in 12 months?

11                MS. SHELL: Your Honor, I'm not sure if Mr. Kemp is  
12 providing testimony, or asking questions here.

13                THE COURT: He sounds like he's asking questions.  
14 Overruled.

15                MS. SHELL: Okay. Thank you, Your Honor.

16 BY MR. KEMP:

17           Q     You think an existing building is somehow inferior  
18 to what you submitted, a generic building plan at the same  
19 address that other applicants have listed?

20           A     No, that's not what I said.

21           Q     Okay. So you think the existing building in the  
22 photos are superior to what you submitted?

23           A     No, that's not what I said.

24                MR. KEMP: Moving on to this Exhibit 5036. Can we  
25 have that on the screen, please.

1 UNIDENTIFIED SPEAKER: I have not been provided that  
2 yet.

3 THE COURT: Okay.

4 BY MR. KEMP:

5 Q Mr. Koch asked you whether or not there had been a  
6 change with regards to employees, and I think he pointed to  
7 page 2 of the document which changed something on page 21. Do  
8 you see that? That's the property section. Page 17 changed,  
9 which is not the listing for diversity purposes. That's on  
10 page 12; right?

11 A I'm not sure.

12 Q Okay. Attachment A was never changed, was it?

13 A I'm not sure.

14 Q And Attachment A is the attachment where an  
15 applicant is required to list its owners, officers, and board  
16 members, just to get focused here. That was never changed,  
17 was it?

18 A I'm not sure.

19 Q Okay. So when you were discussing the addition of  
20 the key personnel to the section on page 17, you were not  
21 intending to imply in any way, shape, or form that there was a  
22 change made to Attachment A, were you?

23 A I think the document speaks for itself.

24 Q And the document does speak for itself. There was  
25 no change made to Attachment A; right?

1           A     I don't know that.

2           Q     Okay. Final area. You talked about the diversity  
3 of NOR and suggested to the Court that diversity was not  
4 outcome determinative. Do you recall that testimony?

5           A     I think what I said was in a hypothetical scenario  
6 if you removed all of our diversity points, we still would  
7 have qualified for licenses.

8                     MR. KEMP: Okay. Well, let's have Exhibits 70 and  
9 71 back up, again. Pop those up. Can you make them a little  
10 bigger.

11 BY MR. KEMP:

12          Q     Okay. That's the list of actual -- that's the list  
13 of winners if diversity was taken out; right?

14          A     This was a hypothetical exercise done by a witness  
15 in this case earlier on that I'm not really familiar with.

16          Q     If you take out all the diversity points, this is  
17 what you get in the unincorporated Clark County; right?

18          A     I believe that's the intention of this  
19 demonstration.

20          Q     Okay. And so MM Development, if you take out the  
21 diversity points, it becomes a winner, as opposed to a loser.

22                     Final area, Your Honor.

23                     THE COURT: Well, no. Now the hook comes out.

24                     So if you could answer, sir.

25                     THE WITNESS: It appears that way based on the table



1 that has been presented here.

2 THE COURT: Thank you.

3 BY MR. KEMP:

4 Q And last question. GreenMart is a loser; right?  
5 GreenMart's no longer on there?

6 A GreenMart is not in the green-shaded area.

7 Q Okay. So it is outcome determinative for --

8 THE COURT: Mr. Kemp, thank you.

9 MR. KEMP: Thank you, Your Honor.

10 THE COURT: Your time has expired.

11 Mr. Cristalli, you did not tell me you had more  
12 questions. You have less than five minutes.

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

14 RECROSS-EXAMINATION

15 BY MR. CRISTALLI:

16 Q Mr. Jolley, you talked a little bit about the  
17 Listserv information you obtained from the Listserv and  
18 information specific to the location and that you didn't have  
19 to have a location unless you already had one; correct?

20 A That's not what I said.

21 Q Okay. Well, we talked a little bit about the  
22 Listserv and the communication and the fact that there was an  
23 attachment, which was the application, and in that application  
24 it changed from the requirement of having to put a location to  
25 a requirement to having to put a location only if you already

1 had a location. Isn't that true?

2 A Well, that's not exactly what the document says. It  
3 says something like -- I'm paraphrasing, provide the address  
4 if there is a lease or you own the building, something like  
5 that.

6 Q Okay. Fair enough. That information is not  
7 contained in the statute. The statute in fact requires  
8 specific location in that you need a letter of intent or a  
9 purchase agreement; correct?

10 MR. KOCH: Objection. Legal conclusion.

11 THE COURT: Overruled.

12 THE WITNESS: Yeah, I just went off of the  
13 application itself.

14 BY MR. CRISTALLI:

15 Q Are you familiar with -- are you familiar -- I  
16 understand what you went off of. I'm just asking, are you  
17 familiar with the statute and the requirement that the statute  
18 requires permission from a landlord, letter of intent,  
19 purchase agreement as it relates to a location?

20 A So my understanding of the statute is that prior to  
21 receiving a final certificate, which required an inspection  
22 and a bunch of other things, that the location must comply  
23 with all the distance separation requirements and other  
24 requirements.

25 Q And, sir, the regulation also requires specific

1 information regarding a physical address, securing a letter of  
2 intent or a purchase agreement also; correct?

3 A I'm not familiar enough to quote that.

4 Q Okay. Well, assuming -- let's just assume that's  
5 the case. Assume that the regulation and the statute requires  
6 that an applicant secure a location through a letter of intent  
7 or some type of letter from the landlord or securing the  
8 property. You could see how an applicant could be confused as  
9 to whether or not they should in fact include that information  
10 because they want to follow the law. You would agree with  
11 that, wouldn't you, sir?

12 A No.

13 Q You understand, also, that the statute and the  
14 regulations also consider zoning issues as it relates to the  
15 securing of a location for the purposes of putting a marijuana  
16 establishment in that location; correct?

17 A I am familiar that in order to receive a final  
18 certificate that locations must have zoning approval and meet  
19 certain distance separation requirements.

20 Q Okay. And in regard to the property locations and  
21 talking about specifically the property locations that you  
22 secured in this case, which were identical to the property  
23 locations of Essence and Thrive, albeit different suites.  
24 We've established that; correct?

25 A If I recall correctly, yes.

1 Q Okay. And we have information in the application  
2 that requires building size. True?

3 A Yes.

4 Q Plans for building size; right?

5 A Yes.

6 Q Impact on the community; correct?

7 A Correct.

8 Q Budgets; right?

9 A Yes.

10 Q You can't -- and you submitted a generic plan for  
11 each and every location that you applied for in each and every  
12 jurisdiction that you applied in; correct?

13 A I wouldn't use the term generic, but we supplied a  
14 proposed floor plan that was consistent across the various  
15 applications that we applied for.

16 Q How big is that suite that you secured in each of  
17 those locations that you put on your application?

18 A I'm not sure.

19 Q You can't fit your building plans in that suite, can  
20 you, sir?

21 A I'm not sure.

22 Q Well, you'd have to move from that location. You're  
23 not going to stay in that location, are you, if you receive  
24 these conditional licenses? You're not going to stay in the  
25 suite, are you, sir?

1           A     We're going to follow the regulations and the rules  
2 to a tee.

3           Q     You're going to stay in that suite?

4           A     We're going to follow the rules and make sure we  
5 have a location that complies --

6           Q     Sir, it's a simple yes or --

7           A     Please don't interrupt me. I'm going to follow all  
8 the rules --

9           THE COURT: Wait. Mr. Cristalli, let him answer.

10          MR. CRISTALLI: Okay.

11          THE COURT: I'm going to give you five more minutes.

12          MR. CRISTALLI: Okay. Thanks.

13          THE WITNESS: We are going to comply with all of the  
14 necessary rules regarding the size, the location, the zoning  
15 requirements, the setbacks, the distance separation setbacks,  
16 local zoning approval, local business license approval and all  
17 other necessary rules in order to have a location that  
18 qualifies and meets all the rules.

19 BY MR. CRISTALLI:

20          Q     Okay. So you're going to contact the State  
21 Department of Taxation and advise them that you are not going  
22 to set up shop in your suite that you put on your application  
23 for the purposes of licensing in the 2018 application process;  
24 correct?

25          A     We are going to identify a location that meets all

1 of the requirements that qualifies for local zoning approval,  
2 business license approval. It may or may not be in the same  
3 location that was provided in the application.

4 Q Sir, are you telling me that you may put your retail  
5 dispensary in the suite that you have listed on your  
6 application?

7 A I'm not discounting anything. We're going to  
8 identify locations that meet all of the State's requirements  
9 and have them built out in such a way that we fell is in the  
10 best interest of the company and the community.

11 Q So if we were to go -- first of all, have you ever  
12 been to the suite?

13 A I'm not sure which suite you're talking about.

14 Q The suite -- okay, all the suites for each location  
15 that you put on your application for each jurisdiction that  
16 you applied in, have you been in those suites?

17 A I have not been in all of those suites, no.

18 Q Do you know the square footage of those suites?

19 A Not off-hand, no.

20 Q Okay. Do you know whether or not you could fit a  
21 5,000 square foot -- well, first of all, let me ask you a  
22 question. How big was your floor plan in terms of building  
23 size as it related to the proposal that you put into your  
24 application?

25 A I would have to go back and refresh my memory by

1 looking at our application to determine the exact --

2 Q Well, sir, is it more than --

3 A I'm still speaking. In order to refresh my memory  
4 on the square footage of the proposed location.

5 Q Is it more than 2,500 square feet?

6 A Yes, I believe so.

7 Q Okay. Is your suite more than 2,500 square feet?

8 A What's my suite? I'm not sure what you're asking.

9 Q I'm not sure, either. What is your suite?

10 A I'm sorry?

11 THE COURT: That's the address on South Durango?

12 MR. CRISTALLI: Yes, Your Honor.

13 THE COURT: All right.

14 THE WITNESS: Okay. That address, I'm not sure of  
15 the square footage. I'm not sure of the square footage of any  
16 adjoining spaces or available spaces. I'd have to go back and  
17 look at that.

18 MR. CRISTALLI: Okay.

19 THE COURT: I'm sorry, it was South Fort Apache.

20 BY MR. CRISTALLI:

21 Q Have you ever been there?

22 THE COURT: 5130 South Fort Apache.

23 THE WITNESS: I can't recall.

24 BY MR. CRISTALLI:

25 Q You can't recall if you were ever in that suite?

1           A     No. I'm in the area frequently. I just don't  
2 recall that specific suite.

3           Q     So you know whether or not that suite is even zoned  
4 or could be zoned for a marijuana retail establishment?

5           A     I don't know off-hand. I assume that because it is  
6 an existing retail center that it would potentially qualify,  
7 yes.

8           Q     Okay. Let me put this out there. If there were  
9 applicants who were trying to abide by the statute and abide  
10 by the regulations and secure property addresses with letters  
11 of intent or purchase agreements and paying money to secure  
12 those locations and having difficulty in terms of zoning and  
13 other issues as it relates to the law, and if they're  
14 competing against you, who has a suite which you can't  
15 identify in terms of size, location, zoning or other issues,  
16 you would agree, sir, would you not, that you would have an  
17 advantage over that applicant?

18               MR. SHEVORSKI: Objection. Compound.

19               THE COURT: Overruled.

20               THE WITNESS: No.

21               MR. SHEVORSKI: I had to try, Your Honor.

22 BY MR. CRISTALLI:

23           Q     Okay, final area. In regard to ownership, it was  
24 your testimony that it would be prohibitive to have publicly  
25 traded companies list all of their shareholders; correct?



1           A     I mean, it's my opinion that it would be  
2     logistically difficult, if not impossible. But more  
3     importantly, that's not what the rules say, in my opinion.

4           Q     Well, let's talk about that. Let me stop you for  
5     one second. I know you want to explain. The initiative says  
6     you must disclose all ownership; correct?

7           A     I don't recall.

8           Q     You don't recall the initiative?

9           A     Well, you're asking me about very specific language  
10    and I don't recall the exact verbiage well enough --

11          Q     Okay.

12          A     -- to be able to honestly answer the question the  
13    way -- that way.

14          Q     Okay, fair enough. Would you agree with me, sir,  
15    that the initiative is the law?

16          A     Yes, as far as I know. I'm not a legal scholar, but  
17    it was a ballot initiative and then it was codified in law and  
18    regulations.

19          Q     So if the initiative, which is law, says all  
20    ownership, it means all ownership, correct, sir?

21               MR. KOCH: Objection. Legal conclusion.

22               THE COURT: Overruled.

23               THE WITNESS: Yeah, I'm not -- you know, I'm not  
24    comfortable making that statement because the Department, who  
25    has the authority to administer the program and run this

1 program, has addressed this issue of public ownership a  
2 certain way. We've gone over it over and over and over for  
3 the last two days.

4 MR. CRISTALLI: Okay.

5 THE WITNESS: You keep trying to get me to say  
6 something different and I'm just going to say --

7 MR. CRISTALLI: I'm not trying to make you say  
8 anything, sir.

9 THE WITNESS: I'm still speaking. You keep asking  
10 me to say it a certain way and all I can say is the Department  
11 has established a mechanism for dealing with that and we  
12 follow their rules.

13 BY MR. CRISTALLI:

14 Q Okay. You would agree with me, sir, that the  
15 Department does not have the authorization to expand or amend  
16 the law, sir. Would you agree with me on that?

17 MR. KOCH: Objection. Legal conclusion.

18 THE COURT: Overruled.

19 THE WITNESS: I'm not a legal scholar. All I know  
20 is it seems to me, a lay person, that they are doing their  
21 best at applying the rules and making the program work.

22 BY MR. CRISTALLI:

23 Q Okay. You're familiar with the regulations as well,  
24 aren't you, sir?

25 A Generally, yes.

1 Q You were on the Task Force, sir; right?

2 A I was on a working group.

3 Q Okay. And you're the President of the Dispensary  
4 Board; right?

5 A Was.

6 Q Okay. And you have a lot of information with regard  
7 to the application process, right, sir?

8 A I had all the same information everyone else had.

9 Q Right. In fact, you said you had more information  
10 and the applicants who didn't receive licenses were ignorant.  
11 You went as far as saying that, too, sir, didn't you?

12 A No.

13 Q Okay. Are you -- you're aware that this is a  
14 competitive bidding process, this application; correct?

15 A Everyone was aware of that.

16 Q Okay. And there's a difference, sir, between  
17 applying for a license for the first time or -- applying for a  
18 license, I'm sorry, in a competitive bidding situation versus  
19 a transfer of ownership or a renewal of ownership. You're  
20 familiar with that; right?

21 A I understand that applying for a new license in a  
22 competitive application process is different than asking for  
23 an ownership transfer approval from the State, yes.

24 Q Okay. You're aware, sir, that the regulation  
25 requires that if you do a renewal or a transfer you only have

1 to state ownership that is more than 5 percent. You're  
2 familiar with that, right, sir?

3 A I'd have to go back and look at the regulations.

4 Q Well, you've dealt with your transfers in the past,  
5 haven't you?

6 A Yes, my company has. Yes.

7 Q And you understand that the requirement is only 5  
8 percent or more if you're dealing with transfers and renewals;  
9 correct?

10 A I'm actually not sure that's what the rules say.

11 Q Okay. That's not a competitive process; correct?

12 A No.

13 Q Okay. And there is nothing in the regulations in  
14 terms of applications for a license that says anything with  
15 regard to only identify an ownership if it is 5 percent or  
16 more?

17 A We can bring up the regulation. I'd like to read it  
18 because I believe it says with regard to applications that for  
19 corporations you're required to list officers.

20 MR. CRISTALLI: I have no further questions, Your  
21 Honor.

22 THE COURT: Thank you.

23 Mr. Bult. My plan is for you to have five minutes  
24 or less, too.

25 MR. BULT: I just have two questions.

1 THE COURT: Yeah, but two questions can take more  
2 than five minutes.

3 CROSS-EXAMINATION

4 BY MR. BULT:

5 Q Mr. Jolley, good morning. My name is Adam Bult. I  
6 represent the ETW plaintiffs.

7 MR. BULT: Shane, can we pull up 5036?

8 BY MR. BULT:

9 Q Do you recall this email that your counsel went over  
10 with you?

11 A Yes.

12 Q And it's dated July 30th, 2018; correct?

13 A Yes.

14 Q In the To line is: statemme@listserv.state.nv.us.  
15 Do you see that?

16 A Yes.

17 Q And you testified that you received that. Do you  
18 remember that?

19 A I don't recall specifically receiving that, but I  
20 believe I am on this distribution list, so I believe I would  
21 have received it. And I also remember having access to this  
22 information and the referenced updated application.

23 Q And how would you have had access to it?

24 A Well, that was asked yesterday and I believe my  
25 response was that I don't remember exactly the mechanism by

1 which I received it, but myself and our large team and our  
2 counsel all had access to the same updated, accurate,  
3 applicable application.

4 Q Okay. And did you testify yesterday or today  
5 whether or not your team had that same information that the  
6 rest of the Listserv recipients would have had?

7 A Well, I believe that our team is on the Listserv and  
8 would have had access to the same information that all other  
9 members of the Listserv would have had access to.

10 Q Would it surprise you to learn that members or  
11 parties to this litigation, also applicants, did not receive  
12 the information contained in this July 30th email?

13 A I wouldn't be able to speculate on that.

14 Q Would it surprise you to learn that GBS Nevada  
15 Partners, a party in this case, did not receive the  
16 information contained in this email?

17 A Again, I have no knowledge of GBS Partners and what  
18 emails they did and did not receive.

19 Q Would it surprise you to learn that Nevada Wellness  
20 Centers, a plaintiff in this litigation, did not receive this  
21 update on July 30th, 2018?

22 A I have the same response. I don't know.

23 Q Last question. Did the Nevada Dispensary  
24 Association make any effort to double check and make sure that  
25 all members of the association actually received this update?

1           A     I don't know.

2           MR. BULT: Thank you. No further questions.

3           THE COURT: Anything else, Mr. Koch?

4           MR. PARKER: Your Honor, can I ask one question,  
5 just to follow up with what --

6           THE COURT: One question, Mr. Parker.

7           MR. PARKER: Just one. Just one.

8           THE COURT: No follow-ups on it, just one question.

9           MR. PARKER: Just one. Just one single.

10                       RE CROSS-EXAMINATION

11 BY MR. PARKER:

12           Q     The Listserv information received by Nevada Organic  
13 Remedies, did you as the NDA president or former president  
14 forward that information to all the NDA members?

15           A     I did not.

16           MR. PARKER: That's it.

17           THE COURT: Thank you, Mr. Parker.

18           Anything else, Mr. Koch?

19           MR. KOCH: No.

20           THE COURT: Thank you, sir. I would leave before  
21 someone changes their mind.

22           THE WITNESS: Thank you.

23           THE COURT: Does anyone need a break before we go  
24 back to Mr. Gilbert, who has been patiently waiting for over  
25 24 hours for what I told him was going to be an hour and a

1 half?

2 (Court recessed at 11:13 a.m. until 11:19 a.m.)

3 THE COURT: Is everybody ready to go? I would  
4 notice your table is a little light there, Mr. Kemp.

5 MR. KEMP: Your Honor, they were right behind me.

6 (Pause in the proceedings)

7 THE COURT: All right. Mr. Gilbert, if you can come  
8 back up, we're going to swear you in. We're going to go until  
9 about noon, we're going to break until one o'clock and then I  
10 think you just heard me say we'll break at 2:00 for 15 minutes  
11 and then keep going.

12 STEVE GILBERT, PLAINTIFFS' WITNESS, SWORN

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

15 THE WITNESS: Steve Gilbert. S-T-E-V-E  
16 G-I-L-B-E-R-T.

17 THE CLERK: Thank you.

18 THE COURT: Mr. Parker.

19 MR. PARKER: May I proceed, Your Honor?

20 THE COURT: You may. You told me you had a lot of  
21 questions for Mr. Gilbert, but let's try to stay on track  
22 because I know Mr. Gilbert will answer questions with yes or  
23 no if that's possible.

24 MR. PARKER: That's a compliment and an instruction,  
25 I think, all at the same time.



1 THE COURT: He can answer however he wants.

2 DIRECT EXAMINATION

3 BY MR. PARKER:

4 Q So, Mr. Gilbert, how are you?

5 A Fine, thank you.

6 Q Good. You've had an opportunity to listen to a lot  
7 of testimony today that may be helpful in terms of helping you  
8 answer questions that I may ask. Do you recall -- strike  
9 that. My clients, Nevada Wellness Center, had a meeting with  
10 two of your staff employees, Ms. Cronkhite and Mr. Hernandez.  
11 Were you aware of that?

12 A What type of meeting?

13 Q It was a meeting to discuss the scoring of their  
14 applications.

15 A Yes, I do recall. I'm aware of the meeting.

16 Q All right. Did you get involved in that meeting at  
17 all?

18 A I don't think I was part of that meeting, if I  
19 recall correctly.

20 Q I know you were not there personally, but were you  
21 or did anyone else participate in that conversation via the  
22 phone?

23 A I'm not sure.

24 Q Are those meetings recorded, to your knowledge?

25 A They are not.

1           Q     Is there typically someone else who listens in on  
2 the phone when those meetings are being conducted?

3           A     Typically no. We do -- Ky Plaskon would maybe  
4 participate remotely from his office.

5           Q     Okay. We were under the impression that someone  
6 from Carson City or from the north may have been involved by  
7 telephone.

8           A     That may have been Mr. Plaskon.

9           Q     Okay. And in terms of that off-site participation,  
10 would that be a recorded conversation, someone would actually  
11 record the discussions?

12          A     No, they're not.

13          Q     Okay. Would the members of DOT take any notes  
14 related to those discussions?

15          A     I think notes were taken for most meetings.

16          Q     All right. Were those notes provided to counsel at  
17 the Department of Taxation?

18          A     I'm not aware. I do not know.

19          Q     Would those notes be available for every meeting  
20 that took place for every applicant that requested such a  
21 meeting?

22          A     That I'm not sure of, if notes were taken for every  
23 meeting.

24          Q     Would the notes be kept by the Department of  
25 Taxation?

1           A     Yes.

2           Q     Could you locate those notes and provide them to  
3 your counsel?

4           A     Yeah.  If they exist, we should have them on record.

5           Q     All right.

6                     (Mr. Parker confers with counsel)

7 BY MR. PARKER:

8           Q     Can I have you take a look at Exhibit 5, please.  It  
9 should be on -- either in front of you or right next to you  
10 because we just used it with the previous witness.

11           THE COURT:  And, sir, if you want to look at the  
12 hard copy you are free to look at it.  There's also 5A that  
13 counsel may refer you to or he may compare them up on the  
14 screen.

15           MR. PARKER:  And can we go to page 8 of 34?  It's  
16 MMLF19, Shane.

17 BY MR. PARKER:

18           Q     And I'm concerned about Assembly Bill 422.  It says  
19 on Assembly Bill 422, it says -- the second bullet point says,  
20 "Adds diversity, race, ethnicity, gender of applicants."  And  
21 then it goes on.  The portion I'm concerned about, it says,  
22 "To the existing merit criteria for the evaluation."  Who made  
23 the decision how this merit criteria for purposes of diversity  
24 would be judged or scored?  And I'd like the name, if you  
25 could.

1           A     I'm not sure who made the decision, but it is in  
2 NAC453D in the regulations. How and when -- who made that  
3 decision, I'm not -- I do not know. Potentially Mr. Pupo  
4 would be a better person to ask.

5           Q     Okay.

6           THE COURT: Sir, on the bottom corner of your  
7 monitor, can you touch to clear the purple dots? Thank you.

8           THE WITNESS: You're welcome, Your Honor.

9 BY MR. PARKER:

10          Q     So you don't know who actually made the decision on  
11 how the scoring would be done. So, you know, the percentages,  
12 the denominator, you were not a part of that decision-making  
13 process?

14          A     Yes, I was.

15          Q     You were. Okay. So who else was involved in that  
16 decision-making process?

17          A     We had a group of staff who took the 2014 medical  
18 application and amended it to match the recreational 453D  
19 regulations. We had a document that was sent around. We  
20 tried to proof it and fact check it and then ultimately we  
21 sent it up to Mr. Pupo for final review.

22          Q     All right. This is going to make me jump my order,  
23 but I want to do so just because you just mentioned this.  
24 QuantumMark prepared the training tools and actually performed  
25 the evaluation of the 2014 process, is that correct?

1 A They -- that's incorrect.

2 Q What part of that is incorrect?

3 A That they performed the evaluations.

4 Q Okay. Who performed the evaluation in 2014?

5 A Contractors, just like in 2018.

6 Q Wasn't that contractor QuantumMark?

7 A QuantumMark was contracted to do a number of things  
8 in 2014. Put together the scoring criteria.

9 (Mr. Parker confers with counsel)

10 BY MR. PARKER:

11 Q Why --

12 THE COURT: You can finish your answer, sir.

13 MR. PARKER: Yes.

14 THE COURT: He was waiting for you to be able to  
15 listen again.

16 THE WITNESS: Yes.

17 MR. PARKER: Okay. No worries. Thank you. That is  
18 a courtesy to you. Go right ahead.

19 THE WITNESS: So if I recall where I was at,  
20 QuantumMark did not participate in the evaluation and  
21 identifications.

22 BY MR. PARKER:

23 Q It was QuantumMark's training tools that were used  
24 in 2014, is that correct?

25 A Yes, that's correct.

1 Q And then did QuantumMark provide its own training  
2 tools for 2018 or did your Department amend QuantumMark's  
3 training tools for purposes of training the evaluators?

4 A We amended the 2014 training tools.

5 Q Why didn't you ask QuantumMark to provide updated  
6 training tools to fit a recreational application?

7 A That wasn't my decision.

8 Q Whose decision was that?

9 A That would have been a contract decision,  
10 essentially Mr. Pupo or the director of the Department.

11 Q Do you know who made that decision?

12 A No, I do not.

13 Q And do you know why that decision was made? Why  
14 wasn't QuantumMark utilized to come up with the 2018 training  
15 tools?

16 A I don't -- I do not know. I don't know if it was  
17 ever contemplated.

18 Q And so going back to where we were, you were a part  
19 of the process in terms of the merit criteria for diversity,  
20 is that correct?

21 A Yes.

22 Q Who made the decision on how the scoring would be  
23 done?

24 A Can you be --

25 Q Yes. Who came up with let's give points based on

1 this percentage? So if you had two out of four, 50 percent;  
2 50 percent translates into whatever many points. Who made  
3 that decision?

4 A If I recall correctly, again, Jorge Pupo, Kara  
5 Cronkhite and myself were going through the application, the  
6 250 points, and if I recall correctly it was Mr. Pupo that,  
7 you know, came up with the breakdown.

8 Q Did you get any guidance from the ballot question in  
9 terms of scoring?

10 A Just in the formulation of the regulations, I guess  
11 is how it would trickle down.

12 Q Okay. Let's start with the ballot question and then  
13 we'll get to the regulations. Was there any direction that  
14 you got from the ballot question itself that led to this  
15 scoring methodology for diversity?

16 A I don't think so, no.

17 Q All right, thank you. So if it didn't come from the  
18 ballot question, are you telling me it came from your group's  
19 interpretation of the regulations?

20 A I think it's in the regulations, if I recall  
21 correctly, or potentially it's not. I'd have to look at that  
22 section of the regulations.

23 Q Okay. I don't believe that the regulation tells you  
24 the denominator or the points to give for percentages of  
25 diversity. Is that your recollection as well?

1           A     Yes.

2           Q     All right.  So if you didn't get the information  
3 from the ballot question and you did not get that information  
4 from the regulations, you had to get it from somewhere.  Did  
5 you get it from any other jurisdiction like Colorado?  Because  
6 I saw in the production of your training tool where there's  
7 thanks given to QuantumMark, thanks given to Colorado.  Do you  
8 remember those?

9           A     I do.

10          Q     All right.  So where did you get this methodology in  
11 scoring diversity?

12          A     The methodology was put together by Kara, Mr. Pupo  
13 and myself.  As far as the breakdown on the evaluation tool --

14          Q     Yes, sir.

15          A     -- that was put in then -- like I said, if I recall  
16 correctly, Mr. Pupo gave us the breakdown of the percentages.

17          Q     Do you know where he got that breakdown from?

18          A     I do not.

19          Q     And do you have any understanding whether or not  
20 that breakdown can be traced to another jurisdiction like  
21 Colorado or Washington or California?

22          A     I wouldn't know, no.

23          Q     You have no idea?

24          A     No.

25          Q     Good enough.  Do you know whether or not there was



1 some type of analysis determined or utilized to determine that  
2 there would be some direct or demonstrably related way of  
3 tying diversity to the operation of a marijuana establishment?

4 A Do you mind repeating that question, sir?

5 Q Certainly. You're familiar with the ballot question  
6 that deals with the standard in terms of criteria, to be  
7 directly and demonstrably related to the operation of a  
8 medical -- I'm sorry, a marijuana establishment?

9 A Yes.

10 Q All right. Was there any analysis utilized in that  
11 standard to the approach ultimately adopted for evaluating or  
12 scoring diversity?

13 A I didn't use it.

14 Q Thank you. Now, I understood from Mr. Plaskon what  
15 the goal of the diversity scoring was or that criteria. Am I  
16 correct that it was included to encourage and facilitate  
17 diversities (sic) owning and operating marijuana  
18 establishments?

19 A I would believe so, yes.

20 Q All right. And Mr. Plaskon testified that based  
21 upon the results of the application process there were no  
22 diverse -- I'm sorry, no minority or gender female owners,  
23 single owners given licenses. Is that correct or incorrect?

24 A Can you repeat that question, sir?

25 Q Do you know of any minorities that were given

1 applications or conditional licenses based on this 2018  
2 application process?

3 A What I do know is the stat that is on our website,  
4 59 percent of the conditional licenses awarded had diversity.

5 Q And I'm asking about owners now, because we've gone  
6 through hours and days of discussing officers who are  
7 employees, advisory board members who are not board members  
8 under the Nevada statutes, so I want to go -- let's talk about  
9 owners. Do you know whether or not a single minority owner  
10 was given a conditional license based on the 2018 application?

11 A Can I ask a clarifying question, sir?

12 Q I will actually address your question. Go right  
13 ahead.

14 A Okay. Are you referring to was a license or an  
15 entity 100 percent minority or diverse?

16 Q Yes, sir.

17 A Okay. If I recall correctly, and I'd have to refer  
18 back, but I think there was one woman all owned that was  
19 awarded a conditional license.

20 Q Okay. One out of 61 or 62?

21 A 61. There might have been multiple on that. I'm  
22 not sure. Different jurisdictions.

23 Q Let me have you take a look at page 15, which is  
24 MMLF26. I want to make sure that's correct. Actually it's  
25 MMLF15. The second to the last box says, "Evaluation

1 Committee." And it says, "An independent committee comprised  
2 of state officers or employees and contracted professionals  
3 established to evaluate and score applications submitted in  
4 response to this request for application. Do you see that?

5 A I do.

6 Q Tell me who made up that evaluation committee.

7 A It would be the A Contractors that the Department  
8 hired.

9 Q Anyone else?

10 A No, that's it.

11 Q So it says state officers. Were there no state  
12 officers that are a part of this evaluation committee?

13 A There were no state officers that evaluated any of  
14 the applications that the Department received.

15 Q So in terms of this application, that's a false  
16 premise. The applicants, if they read this, they would think  
17 that this evaluation committee actually was comprised of state  
18 officers, but you're telling me there were no state officers  
19 that made up this evaluation committee, is that correct?

20 A Well, it says "or employees and contracted  
21 professionals."

22 Q Okay. But there were no employees, either; right?

23 A No, there was not any. The employees took place in  
24 the training of the contractors.

25 Q But in terms of the evaluation committee itself,

1 there were no state officers and there were no state  
2 employees, is that correct?

3 A No -- well, no state officers or employees evaluated  
4 the applications. State officers and employees were involved  
5 in the process of getting the contractors on board, training  
6 them and then getting them ready for the applications to be  
7 received.

8 Q That's fine, but that's not what it says here. And  
9 in fact it says that the state officers or employees would  
10 play a part in the evaluation and scoring. But that's not  
11 true. That's not what happened, is it?

12 A Well, they did play a part in -- they did not play a  
13 part in scoring and evaluating the applications.

14 Q Thank you, sir. Now, if we go to the next page,  
15 page 16, the identifiers or identified criteria response,  
16 which is the second box, do you see that?

17 A Yes.

18 Q The last sentence in this category or this box says,  
19 "Assignment of identifiers will be application specific and  
20 will be communicated in the application in the identifier  
21 legend." Do you see that?

22 A Yes.

23 Q Now, what we've seen up to this point are groupings  
24 of applications. So, for example, with Nevada Organics, which  
25 you heard Mr. Jolley's -- his testimony, did you notice that

1 they had his applications grouped? I think it was 215 through  
2 218 or whatever it was, 212 to 218. Do you remember that?

3 A Yes. Uh-huh.

4 Q Was that done, to your knowledge, for every  
5 application that had more than one license it was seeking?

6 A It was done for every application that was received.

7 Q Okay. So if Nevada Organics had eight applications,  
8 would all eight applications be grouped together for the  
9 evaluators to review, let's say for the identified topics?

10 A When they were -- Yes, they would. It would be the  
11 RD -- whatever RD numbers they were assigned when they came  
12 in. So if it was sequential, they would be 1 through 10 or 1  
13 through 8.

14 Q Now, the first sentence says here, "A nonidentified  
15 response such as an assignment of letters, numbers, job titles  
16 or generic business type to show the identity of a person or  
17 business remains unidentifiable." Do you see that?

18 A Yes.

19 Q If you group all the licenses together, wouldn't the  
20 evaluator know that that one applicant would be providing the  
21 applications for all of the jurisdictions? So be it company  
22 Nevada Organics, or company M&M, if they're all together, even  
23 if you don't know the name, you know that that one applicant  
24 is seeking applications for all of these jurisdictions because  
25 you've grouped them all together?

1           A     Yeah, that's correct. And then on the application  
2 we asked them to identify -- I think it's Attachment I, which  
3 jurisdictions they want to apply for.

4           Q     Right. The problem is if you're trying to comply  
5 with your own application, you're supposed to keep them  
6 unidentifiable. Isn't that correct?

7           A     The unidentified section, yes.

8           Q     Right. Were you here when the statistician gave her  
9 testimony regarding how you remove the blind procedure by  
10 grouping these together?

11          A     I think I was for some of it, I don't know if all of  
12 it. I think it was all of it.

13          Q     Did you hear that testimony?

14          A     I did.

15          Q     All right. So would you agree with me from the  
16 State's perspective that as soon as the State made that  
17 decision to group applications together, it removed the layer  
18 of blindness, given what the statistician testified to?

19          A     I'm not a statistician, so I don't know if I can  
20 speak to the rules of statistics --

21          Q     Of course.

22          A     -- but I don't think so, no.

23          Q     All right. Did -- you would agree with me that the  
24 State did not use a random approach by mixing all of the  
25 applications up so there were no commonality in grouping

1 applications. That's a true statement, isn't it?

2 A Can you repeat that, please?

3 Q Certainly. Instead of giving an evaluator eight  
4 applications from one company together that doesn't identify  
5 the name, you give -- you mix them all up, not having any  
6 groupings whatsoever so that there's no commonality among  
7 applications that could be discerned by just reading eight in  
8 sequential order?

9 A Well, there was only one application submitted for  
10 the most part --

11 Q Okay.

12 A -- I think. I don't know if anybody submitted two  
13 applications or not. One application was submitted on a thumb  
14 drive or disk.

15 Q Right.

16 A And then, you know, the appropriate jurisdictions  
17 were checked and then they were evaluated that way.

18 Q Right. But the jurisdictions were not separated for  
19 the evaluators, isn't that correct?

20 A That's correct.

21 Q All right. Which meant that an evaluator knew if  
22 they were looking at one application -- in the case of Nevada  
23 Organics they were looking at one applicant for eight  
24 jurisdictions. Isn't that correct?

25 A Yes.

1 Q Right. Which means the individual applications were  
2 not looked at individually, they were looked at as a group.  
3 Isn't that correct?

4 A Each application was looked at individually.

5 Q Not the jurisdictions?

6 A Not the jurisdictions.

7 Q Thank you. Hence, when you look at one applicant  
8 and we've seen on the screen almost complete uniformity in the  
9 numbers, that's what happens when you give one evaluator eight  
10 jurisdictions, one application, isn't it?

11 A Yes. And I feel that that's how it should be if  
12 it's an identical application, let's say on the identified  
13 side, it shouldn't vary from jurisdiction to jurisdiction.

14 Q But let's talk about the nonidentified side where  
15 you are supposed to have jurisdiction specific locations,  
16 floor plans, security plans, impact to the community, care,  
17 safety and quality. All of those are supposed to be  
18 jurisdiction and application specific; right?

19 A Again, location wasn't required, so a lot of times  
20 and I think you were testifying this morning that they  
21 submitted a floor plan with a location but not a specific  
22 location for that jurisdiction. So in that case if they were  
23 evaluated altogether, they should come up with a new score.  
24 A lot of times what I think I saw was, you know, a different  
25 part of the state might have a different floor plan.



1           Q     You touched on part of it, but let's generally  
2 discuss this kind of. I don't want to get out of order here.  
3 In terms of the nonidentified, the building size and adequacy  
4 would be a part of that criteria, is that correct?

5           A     Yeah, that's part of it. Yeah.

6           Q     Right. And the impact on the community is a part of  
7 that criteria, isn't it?

8           A     Yes.

9           Q     All right. So each evaluator in looking at each  
10 jurisdiction, not just the -- not the overall application but  
11 each jurisdiction within the application, right, they're  
12 charged with that responsibility, is that correct?

13          A     Yes.

14          Q     Right. And to do so you had to look at every  
15 jurisdiction and the impact of that location on that  
16 jurisdiction; correct?

17          A     That's what -- the evaluators are looking for a  
18 comprehensive plan. Uh --

19          Q     Let me -- okay, go right ahead. I apologize. Go  
20 right ahead.

21          A     A comprehensive plan, you know, to where they're  
22 addressing or highlighting the things that they want to do,  
23 they plan to do, and they were evaluated based on that.

24          Q     All right. And I appreciate that response, but  
25 let's go back to jurisdiction, location, impact to the

1 community because I want to talk about those issues in regard  
2 to an evaluation per jurisdiction. Do you understand?

3 A Yes.

4 Q All right. So what may be perfect for North Las  
5 Vegas may not be perfect for Henderson; right?

6 A It would get into -- it depends on the location --

7 Q Right.

8 A -- and the location wasn't required.

9 Q But building size, building floor plan, safety, all  
10 of those things, including the impact in that community were  
11 separate identifiable elements that were made a part of that  
12 criteria for scoring, isn't it?

13 A Yes. That's what the application asks for, yes.

14 Q So every evaluator was charged with that  
15 responsibility in terms of taking those factors into  
16 consideration as a part of your scoring; right? Isn't that  
17 correct, sir?

18 A Yeah, besides location, you know, location. So they  
19 looked at -- they looked at the building, they looked at the  
20 plan, they looked at how much was included, how it matched the  
21 regs.

22 Q Now, did you hear yourself just say they look at the  
23 building?

24 A The floor plan.

25 Q Ah-ha.

1           A     Sorry.

2           Q     No, I appreciate that. The fact is they could not  
3 look at a building with Nevada Organics because there were no  
4 buildings provided, isn't that correct?

5           A     I'm not sure. I mean, when I saw their application  
6 it was for the first time today.

7           Q     Well, you heard the testimony regarding floor plans  
8 as opposed to buildings; right?

9           A     Yes.

10          Q     All right. Now, your Freudian slip in terms of  
11 throwing out buildings is well placed because the application  
12 itself talks about the adequacy of the building size. They  
13 didn't say the adequacy of a floor plan, did it?

14          A     I'd have to refer back to it.

15          Q     We'll get there. But isn't that your recollection?

16          A     I'd have to refer back to it to answer.

17          Q     So each evaluator was charged with the  
18 responsibility of taking all of those factors into  
19 consideration per license request, isn't that correct?

20          A     Yes.

21          Q     All right. And giving the evaluator all eight  
22 jurisdiction license requests in one application, based upon  
23 what you heard in this courtroom, would remove at least a  
24 layer of blindness because they were all grouped together.  
25 Isn't that a fair statement, sir?

1           A     I don't -- I don't necessarily agree with that.

2           Q     Okay. You said that the evaluators were given the  
3 one thumb drive application; right?

4           A     They were.

5           Q     So they at least knew that those were all together?

6           A     Yes.

7           Q     So in terms of blindness, in terms of the  
8 relationship between each of those jurisdiction requests, they  
9 knew that it was all involved with one application, isn't that  
10 correct?

11          A     It would remove that type of blindness --

12          Q     Thank you.

13          A     -- but not blindness from who they identify as.

14          Q     That's fine. I just want to make sure we at least  
15 agree that one level of blindness was removed by that approach  
16 taken by the Department of Taxation.

17          A     I don't know what the definition of a level of  
18 blindness is, though.

19          Q     Good enough. The Court does.

20                THE COURT: Okay. I'm getting ready for lunch. Are  
21 we at a good place to break?

22                MR. PARKER: Is it already that time?

23                THE COURT: It's 10 till.

24                MR. PARKER: Oh, man, time is moving fast.

25                THE WITNESS: Yes, it is.

1 MR. PARKER: All right.

2 THE COURT: With that, sir, if you could come back  
3 at 1:00. You have a nice lunch.

4 THE WITNESS: Thank you, Your Honor.

5 (Court recessed at 11:49 a.m. until 1:04 p.m.)

6 THE COURT: Mr. Parker.

7 MR. PARKER: Yes?

8 THE COURT: Are you ready?

9 MR. PARKER: Just give me a high sign. Thank you,  
10 Your Honor.

11 THE COURT: That was the high sign for you to start.

12 MR. PARKER: Yes, indeed.

13 DIRECT EXAMINATION (Continued)

14 BY MR. PARKER:

15 Q Mr. Gilbert, how are you?

16 A Fine, thank you.

17 Q Good. Good afternoon. So when we left off we were  
18 talking about the application and I want to continue with the  
19 application so that we have a better understanding going  
20 forward how certain decisions were made and how the  
21 evaluations were done. I'd like for you to take a look at  
22 again Exhibit 5, page 22 of the application. This is the  
23 Attachment A. Now, when we left off this morning we were  
24 talking about the merit criteria for diversity. Do you  
25 remember that?

1           A     Yes.

2           Q     All right.  Now, this attachment deals with the  
3     identification of owners, officers and board members.  Do you  
4     see that?

5           A     Yes, I do.

6           Q     Did the State provide any insight beyond what we see  
7     on this page as to how LLCs versus C Corporations versus  
8     professional corporations versus any other type of corporation  
9     should identify owners, officers or board members?

10          A     Not that I can recall, besides the information that  
11     was provided in the application.

12          Q     Okay.  So, for example, there were Listserv  
13     disseminations that explained who would be a proper board  
14     member versus officer versus owner?

15          A     I don't recall a Listserv going out with that  
16     information.

17          Q     Do you recall any conversations with any particular  
18     applicants where information beyond what's here on this  
19     document was disclosed in terms of board members?

20          A     Personally I don't recall myself having a  
21     conversation to that extent.

22          Q     All right.  Is it fair to say, then, that there was  
23     no additional information beyond the application itself  
24     related to what would constitute a board and its members?

25          A     Not to my recollection during the application

1 period. Yeah.

2 Q And is it also fair to say that there is nothing in  
3 the application that mentions the words advisory board?

4 A I'd have to review the application. Not to my  
5 knowledge there isn't.

6 Q And is it also fair to say that there is no  
7 definition of the word officer beyond what's included here in  
8 terms of the word itself, officer, in the Attachment A of the  
9 application?

10 THE COURT: Were you reading my notes, Mr. Parker?

11 MR. PARKER: I think we're on the same page, Your  
12 Honor.

13 THE WITNESS: Could you --

14 BY MR. PARKER:

15 Q Isn't that true, sir?

16 A Is it in the definition section?

17 Q Yes. Is there a definition section that mentions  
18 officer, number one, which I believe there isn't.

19 THE COURT: So then we would go to NRS Chapter 453D  
20 and the definitions are in the section that is 030.

21 MR. PARKER: That is correct.

22 And we could pull that up, Shane, if you could.

23 THE COURT: And somewhere between 15 and 16 will be  
24 words that start with the letter O.

25 MR. PARKER: That is correct, Your Honor. And you

1 have my notes. But I took them with me for lunch, so then we  
2 can't be cheating off each other.

3 THE COURT: Yeah. I was at a bench bar meeting.

4 MR. PARKER: Your Honor, may I approach?

5 THE COURT: You may.

6 MR. PARKER: Thank you.

7 Shane, you have to go up.

8 THE COURT: There you go.

9 MR. PARKER: All right. So between --

10 THE COURT: Whoops.

11 MR. PARKER: You just killed it, Shane. No, no, the  
12 other way. The other way, Shane. Go up, up, up, up. Stop.

13 THE COURT: Stop.

14 MR. PARKER: Stop.

15 THE COURT: At the very bottom, it's right there.

16 MR. PARKER: Right there.

17 THE COURT: Whoops.

18 MR. PARKER: All right. Stop right there, Shane.

19 BY MR. PARKER:

20 Q Between 15 and 16 do you see the word officer?

21 A Between 15 and 16?

22 Q Yes, sir. Paragraph 15 and 16. Do you see the word  
23 officer between marijuana and process?

24 THE COURT: And the reason he stopped you there,  
25 sir, is they appear to be in alphabetical order.



1 MR. PARKER: That's correct.

2 THE WITNESS: I don't see the word officer in 15 or  
3 16.

4 MR. PARKER: Thank you.

5 BY MR. PARKER:

6 Q Would you agree with me, sir, that the word officer  
7 is not defined in 453D?

8 A I would have to review 453 -- Oh.

9 THE COURT: Hold on. Let me get the book for you.  
10 If I remember correctly it's in the pocket part.

11 MR. PARKER: It is.

12 THE COURT: Here you go, sir. You're at the  
13 beginning of 453D.

14 THE WITNESS: Thank you.

15 THE COURT: Look to your heart's content and let us  
16 know when you're done.

17 THE WITNESS: Based on the definition section and my  
18 quick skim through the statute, it doesn't appear to be in the  
19 statute.

20 BY MR. PARKER:

21 Q All right. So the word officer is not defined in  
22 the statute. Would you also agree with me that the word owner  
23 is not defined in the statute?

24 THE COURT: Please feel free to keep the book, sir.

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

1 THE COURT: I'm looking in 78 and 86 now, so.

2 BY MR. PARKER:

3 Q Are you ready, sir?

4 A Yeah. Can you repeat the question?

5 Q Yes. Do you see the definition of owners in 453D?

6 A I don't see the definition, no.

7 Q Now, if you see no definitions of the word owners or  
8 officers, did you as the trainer or one of the trainers of the  
9 evaluators provide the evaluators with a definition of owners  
10 or officers?

11 A I don't recall training them on that. But in the  
12 regulations, 453D, it does define an LLC has officers. A sole  
13 proprietorship I think is owners and LLC is membership or  
14 members.

15 Q Okay, good enough. The answer I believe you said is  
16 you did not provide a definition of owners or officers to the  
17 evaluators. Is that true?

18 A I don't recall training on that. That might have  
19 been a question, but I don't recall. It wasn't, I don't  
20 think, part of the training modules.

21 Q Okay. I appreciate your answer, but you're not  
22 truly answering my question. My question was, did you provide  
23 them a definition? Your response was we did not provide  
24 training. So I want to divorce you of training for just a  
25 second and have you answer that question first and then I will

1 ask you a follow-up question regarding the training, okay?

2 Number one, did you provide a definition for the terms owners  
3 or officers to the evaluators?

4 A I may have verbally given them the definition as we  
5 used it at the Department; however, that would have been done  
6 in training.

7 Q Did you provide anything in writing?

8 A Not that I recall, no.

9 Q All right. Is there a definition used or utilized  
10 by the DOT that we have not become aware of? Because we don't  
11 see it in the statute, so where would that -- if there is, I  
12 want to know what it is and where can you find it?

13 A Just that NRS or NAC that I mentioned before is how  
14 we apply an ownership -- owners, officers and board members to  
15 the different corporate structures.

16 Q Well, the NAC, 453D in the code, the Administrative  
17 Code, doesn't have the definition of those, either, I don't  
18 believe, Mr. Gilbert. So --

19 A I'd have to take a look at it.

20 THE COURT: I don't have the Administrative Code  
21 here in a book, sir, to hand you. Sorry.

22 MR. PARKER: Do we have that? Do we have the NAC?

23 MR. CRISTALLI: Yes, we do.

24 MR. PARKER: Yeah. I thought we did, too, because I  
25 looked at it earlier when I examined Mr. Plaskon.

1 MR. CRISTALLI: Do you want the paper?

2 MR. PARKER: Yeah. Do you have the paper?

3 Your Honor, if I have the paper could I approach the  
4 witness with the actual --

5 THE COURT: You could.

6 And, sir, you don't have to believe it's the correct  
7 version of the NAC. You can confirm that for yourself and it  
8 looks different, you let us know.

9 THE WITNESS: Okay. Thank you.

10 (Mr. Parker confers with counsel)

11 MR. PARKER: Okay. Is that the -- Stop right there,  
12 Shane. Was that the reg or was that the NRS?

13 I.T. TECHNICIAN: This is the reg.

14 MR. PARKER: Okay. Let me -- can you go to the  
15 first page of it so I can see all of the listings?

16 Your Honor, may I approach the screen?

17 THE COURT: You may.

18 MR. PARKER: It's too blurry to read. Is it on your  
19 screen?

20 THE WITNESS: Yeah, it's hard to read, though.

21 MR. PARKER: Can you read it? Is it any easier on  
22 your screen?

23 THE WITNESS: It's probably easier up there.

24 MR. PARKER: Go back up to the top for me, Shane.  
25 Let me see if there is a definitions portion. Yes. 0001.

1 Go up, go up, go up. All right, stop. Now go up. We're at  
2 seeds. Go up so we can see if we can go to -- stop. All  
3 right, there we go.

4 BY MR. PARKER:

5 Q So, 453D.089 and then between 453D.094, do you see  
6 any word that starts with the letter O?

7 A I do.

8 Q Do you see a word owners or officers defined in the  
9 regulation?

10 A No, I do not.

11 Q All right. So we know you didn't get the definition  
12 from the statute. We know it's not in the application and we  
13 know you didn't get it from your regulation. So where would  
14 you get a definition of owner or officer from that you would  
15 use for purposes of giving it to the evaluators?

16 A Well, it's been -- those terms have been used since  
17 2014 to define the ownership structures of the establishments.  
18 We know that the owners, you know, have a percentage of  
19 ownership. Board members may or may not. And officers  
20 typically do have a percentage of ownership.

21 Q All right. And thank you for that. When the  
22 evaluators were tasked with looking at Attachment A, would  
23 they also by virtue of what you just said be provided with  
24 information confirming that the owners, officers and/or board  
25 members had a percentage of ownership of the applicant?

1           A     So the process that the Department followed when  
2 they looked at the application for the first time and the  
3 administrative assistants, they would compare it to the  
4 ownership that the Department had on record at the time.

5           Q     And where would that come from, Mr. Gilbert?

6           A     A database that we keep on owners, officers and  
7 board members, similar to what's posted on the website.

8           Q     Okay. Would that also include information from the  
9 Secretary of State's Office?

10          A     That's part of the packets that we get, so, yeah,  
11 their entire file would.

12          Q     Good. So your database, is it only comprised of  
13 licensees or license holders of the medical marijuana  
14 establishments?

15          A     The medical marijuana?

16          Q     Yes. So for purposes of the 2018 application the  
17 evaluators are charged with looking at Attachment A and they  
18 have an opportunity or are afforded the ability to check the  
19 percentage ownership of everyone listed on Attachment A. So  
20 you're saying there's a database that they use to do that,  
21 perform that check, is that correct?

22          A     Yeah. It was checked by -- that was checked by  
23 staff.

24          Q     And where does the information come from that's in  
25 the database?

1           A     From either the original application in 2017 or a  
2 change of ownership that might have come through since then.

3           Q     So the only thing you're checking is information  
4 provided by the applicant? You're not using any independent  
5 source to confirm whether or not an owner, officer or board  
6 member has an ownership interest?

7           A     I'm sorry, can you repeat that question?

8           Q     Yes. You said that the information that the  
9 evaluators are using comes from a database that the Department  
10 of Taxation has and you said that database comes from  
11 information from prior applications, you said 2017  
12 applications, is that correct?

13          A     Or '14, depending on -- depending what transpired  
14 between 2014 and 2018.

15          Q     Good enough. But you're having evaluators use  
16 information received from the applicants themselves, be it  
17 2014 or '17, to cross check, is that correct?

18          A     Yeah. The information that they provide us in their  
19 application, whether it's a transfer of ownership or -- the  
20 application is the information that we rely on.

21          Q     So you're relying on their information to check  
22 their information, is that correct?

23          A     Well, what we have on record at the Department is  
24 the ownership that we approve the application for.

25          Q     Again, you're relying on the applicant's information

1 to check the applicant's updated application, is that correct?

2 A Yeah. Well, the information that was vetted through  
3 us through an approval process of either an application or a  
4 transfer of ownership, yeah.

5 Q Right. But that information, again, was provided by  
6 the applicant?

7 A Yes, it was.

8 Q Right. So what outside source are you using to  
9 actually validate that the information you're receiving from  
10 the applicant is true and correct?

11 A We don't use an outside source.

12 Q All right. So that means that a person can list an  
13 employee as an officer and you have no way of checking in  
14 terms of your own database whether or not that applicant is  
15 giving you truthful and accurate information because the only  
16 information you're using in the database is information they  
17 provided to you previously, isn't that correct?

18 A Yes, it is. And they also sign an attestation  
19 saying this information is true and we rely on the information  
20 that's provided by the applicant.

21 Q All right. And so like today, you have the fortune  
22 or misfortune of listening to me cross-examine Mr. Jolley and  
23 you heard him indicate to us after reviewing the Secretary of  
24 State's filing that the only officers identified for purposes  
25 of the Secretary of State filing was himself and Mr. Byrne.



1 Did you hear that?

2 A I did, yes.

3 Q Neither of the two employees he added to his list of  
4 officers were identified with the Secretary of State, is that  
5 correct?

6 A Based on the documents that were put up on the  
7 screen, I believe so.

8 A And if the evaluators could have checked the  
9 Secretary of State information, they would have been able to  
10 determine that these officers listed in your 2018 application  
11 for Nevada Organics were not reflected on their Secretary of  
12 State filing. Isn't that correct as well?

13 A I can't speak for the evaluators, you know, but they  
14 went off the information that was provided in the application.

15 Q Right. But if they checked the Secretary of State's  
16 information, which was available, isn't that correct?

17 A Oh, yeah. Yes.

18 Q Right. They would have determined at the very least  
19 from its face that these are officers that are not identified  
20 with the Secretary of State. Isn't that correct?

21 A Yeah, there would have been a difference, I guess.  
22 I haven't looked at Mr. Jolley's application, though, so I  
23 don't know what he listed.

24 Q And when you were cross-examined by Mr. Kemp, you  
25 indicated, I believe, and correct me if I'm wrong, that

1 differences should have been further examined. If you saw  
2 something that was different, someone should have raised a  
3 flag or said something. Isn't that correct?

4 A I don't know if I recall speaking to that  
5 specifically.

6 Q You didn't say flag. That's my term. But you said  
7 if there was a difference, there would be some questions  
8 asked.

9 A If I recall correctly, the difference would have  
10 been in the ownership structure that we have on record versus  
11 what was submitted in the application.

12 Q Right. And if you saw something that differed, you  
13 being an evaluator, based upon your training you saw something  
14 that was different than what was held by the Secretary of  
15 State, then someone should have asked the question. Isn't  
16 that true?

17 A No, not based on the training. What I was referring  
18 to is when we checked the application to see if the ownership  
19 matched currently what was on record with the Department, not  
20 with the Secretary of State.

21 Q Right. I'm beyond that now.

22 A Yeah. If that matched, then the application was  
23 okay to move forward. If there was a discrepancy between the  
24 ownership, then that would have been brought to the attention  
25 of management.

1           Q     Understood. But how about if there is a discrepancy  
2 between what's at the Secretary of State and what's a part of  
3 Attachment A?

4           A     Really it was just to see if they were registered  
5 with the Secretary of State.

6           Q     So no evaluation was done or no vetting was done to  
7 determine if the Secretary of State's records reflected what  
8 was presented in Attachment A?

9           A     I don't think -- there was no comparison.

10          Q     Thank you. And would you also agree that there was  
11 no comparison of any outside source? Any other reliable  
12 source was not used to compare Attachment A in terms of  
13 ownership, officers or board members?

14          A     I don't think I can answer that question because  
15 that would have been -- that would have been the job of the  
16 evaluators to investigate an organizational chart or the  
17 structure of a company the best that they possibly could.

18          Q     Did you provide training on how to go to an outside  
19 source to verify the information on Attachment A?

20          A     They were trained to, you know, Google and do as  
21 much investigative work as they possibly can.

22          Q     Okay. Well, it didn't take much to pull up the  
23 Secretary of State's information; right? Isn't that correct?

24          A     No, it's very easy.

25          Q     Right. So at the very least we know that that

1 wasn't done in terms of Nevada Organics. Is that correct?

2 A Not to compare if the Secretary of State's  
3 information matched what was in the application.

4 Q To your knowledge, was any outside sources used to  
5 evaluate any of these Attachment As?

6 A I would have to refer to the evaluators on that  
7 because I wasn't -- I didn't consult them after they started  
8 the process.

9 Q And based upon your review of Attachment A, did you  
10 provide any training or information regarding advisory boards?

11 A Not that I can recall, no.

12 Q So can you tell me why and tell this Court why would  
13 members of an advisory board be utilized for purposes of  
14 diversity if there was no training in terms of that?

15 A I would have to look at the application and the  
16 details behind it.

17 Q Okay. Because you would agree that there was no  
18 training done or definitions provided for advisory board  
19 members, is that correct?

20 A I can only speak to what I trained on and I did not  
21 train on advisory boards.

22 Q Thank you. So in terms of your training, if an  
23 evaluator or three evaluators used advisory board members as a  
24 part of their diversity scoring, that would be beyond training  
25 that you provided, is that correct?

1           A     That I personally provided.

2           Q     Yes, sir.

3           A     But we had other trainers working on the identified  
4 and the nonidentified sections.

5           Q     Just talking about you. That would be beyond your  
6 training, is that correct?

7           A     I don't know if it would be beyond my training, but  
8 I don't think it was brought up.

9           Q     Thank you. It would be inconsistent with your  
10 training because you didn't provide that training. Is that  
11 true?

12          A     Not that I can recall.

13          Q     So that's a true statement I made, isn't it?

14          A     What was the statement?

15          Q     The statement was you did not provide any training  
16 on advisory board members and how they were to be considered,  
17 if at all. Isn't that correct?

18          A     I personally did not.

19          Q     Thank you. And if an evaluator or three evaluators  
20 utilized advisory board members in their diversity scoring,  
21 that was not something you trained or allowed them to do based  
22 upon your training. Isn't that correct?

23          A     To my -- yes, to my recollection, yes.

24          Q     Thank you. All right. And the same would be true  
25 in terms of classifying employees as officers. You did not

1 provide any training to evaluators which would allow for staff  
2 members or employees to be considered officers, is that  
3 correct?

4 A I don't recall that ever coming up as a question  
5 during the training, so if it didn't come up -- I mean, we  
6 trained on, you know, Attachment A, which was listing of  
7 owners, officers and board members.

8 Q Yes, sir.

9 A And I don't recall anything -- any questions being  
10 raised about advisory board members.

11 Q And is it also true that because you did not provide  
12 training to these evaluators in determining the -- or allowing  
13 for employees to be classified as officers, isn't it also true  
14 that you did not train them on allowing employees designated  
15 as officers to be considered as a part of diversity?

16 A Can you repeat that?

17 Q Yes. And let me say up front it's somewhat  
18 truncated, this question, because it takes a couple things  
19 into consideration. Number one, did you provide training and  
20 how to determine if an employee could be rightfully classified  
21 as an officer? And I believe you said you didn't provide that  
22 training. Is that true?

23 A We relied on the information that was provided by  
24 the applicant.

25 Q That's fine. But you did not provide any training

1 to the evaluators in determining whether an employee could be  
2 considered an officer, isn't that true, sir?

3 A Personally I did not.

4 Q Thank you. So now we take that as a platform for  
5 the next question. The next question is if you didn't provide  
6 the training on how -- when an employee could be considered an  
7 officer, would you also agree that that employee being  
8 classified as an officer would not have been -- the evaluator  
9 would not have been trained on how to determine the diversity  
10 qualifications for those employees that are now being  
11 classified as officers?

12 A Well, if they're listed as an officer on Attachment  
13 A, the diversity pieces were taken from Attachment C, I think  
14 it was. I don't know if they were listed on Attachment C,  
15 also, but that was the information the evaluators relied on,  
16 what was provided on Attachment C.

17 Q Right. And listen, I understand the attachments.  
18 What I'm trying to do is get through the training first. So  
19 what I've done, and I may be slow but methodical about it, is  
20 I take each one of the items one by one, which I started with  
21 how you define them and then we've gone from definitions to  
22 now use of those definitions and your training. Follow me?

23 A I am.

24 Q And I'm taking them in inverse order. I started  
25 with board members instead of owners. We've gone through

1 board members and now we're looking at officers. And I want  
2 to know whether or not, and I believe the answer is you did  
3 not provide any training to the evaluators on how to  
4 distinguish between an employee and an officer. Isn't that  
5 correct?

6 A There was no specific training on how to distinguish  
7 between. And again, they look at their org chart, they look  
8 at Attachment C, they look at Attachment A and define the  
9 roles that way.

10 Q Okay. And if there was no training in terms of  
11 determining when an employee could be considered an officer,  
12 is it also true that there was no training in determining when  
13 this employee/officer would be utilized for purposes of  
14 diversity scoring?

15 A Can you repeat that, sir? I'm sorry.

16 Q Yes. Let me ask it this way. Maybe this is an easy  
17 way for you to understand it. How would an evaluator know  
18 whether to include an employee/officer in the diversity  
19 calculation?

20 A If they were listed on Attachment A and then also  
21 listed on Attachment C -- I'm pretty sure it's C -- and then  
22 compare it to, you know, the narratives that they wrote, the  
23 organizational chart that they provided in their application,  
24 they would use the information provided on Attachment C.

25 Q Okay. Now, again, I guess this means that the



1 evaluators are simply utilizing the information presented  
2 without doing any -- I hate to use this word again --  
3 evaluation of the employee's role versus ownership interest in  
4 the company, is that correct?

5 A Well, that goes back to us comparing the ownership  
6 that was provided in the application to the ownership that the  
7 Department had on record, and if that matched then the  
8 application was okay to go forward.

9 Q Let me bring this home for you. The reason why I'm  
10 asking is because Mr. Jolley said that his purchasing person,  
11 director person he listed as an officer, but there's no  
12 corresponding information regarding ownership of the company  
13 of the purchasing director. So how would an evaluator know  
14 whether or not to include that person, the Director of  
15 Purchasing, in the diversity calculation?

16 A I think it goes back to my previous comment that the  
17 ownership was compared and if the ownership matched what the  
18 Department had on record -- because we don't keep records of  
19 employees, we keep records of what they provide as their  
20 owners, officers and board members in either an initial  
21 application, a transfer of ownership application or --

22 Q Good enough. Good enough. In terms of owners --  
23 let's move on. In terms of owners we've learned now and  
24 you've heard testimony that owners of publicly held companies,  
25 be it in the United States or in Canada, were not all

1 provided. Is that correct?

2 A That's correct.

3 Q Would you agree with me that be it Attachment A, B  
4 or C, there is no limitation in terms of ownership interest  
5 stated in the application? So be it a 1 percent owner, 10  
6 percent owner, a 50 percent owner, it just says owners, is  
7 that correct?

8 A I believe so, yes.

9 Q And wouldn't you agree that that means all owners,  
10 not 10 percent owners, not 20 percent owners but all owners  
11 since there's no definition limiting that category?

12 A Well, in the public or in the corporations it's the  
13 officers that we -- I know we didn't ask for it, but the  
14 information that we've gathered throughout the years is the  
15 officers of the corporation, not the shareholders.

16 Q Okay. But that's not what the application says,  
17 isn't that correct?

18 A It just asks for owners, officers and board members.

19 Q Exactly. Not one or the other, it says owners,  
20 officers and board members, is that correct?

21 A Yes.

22 Q Which meant that you as the Department or part of  
23 the DOT, expected to get information on all three categories,  
24 is that correct, owners, officers and board members?

25 A Yes.

1 Q Right. And so in terms of owners, you would agree  
2 with me, sir, that this name or category, owners, did not  
3 limit it in any way?

4 A Can you repeat that question, please?

5 Q Yes. There's no limitations in terms of ownership  
6 interest. It says owners, which would include all, isn't that  
7 true?

8 A Well, the Department had to -- it had to -- we  
9 couldn't vet hundreds of shareholders on a daily basis,  
10 because I think that's what the task would involve is anytime  
11 somebody bought or sold a share we would have to re-vet this  
12 person.

13 Q Well, then couldn't you have said in the attachment  
14 we don't have time to vet all the owners of a publicly held  
15 corporation or a big corporation, just tell us the big ones?  
16 That's not what it said here, is it?

17 A No, it doesn't say that.

18 MR. PARKER: Can you put up Exhibit 5 again, page 22  
19 of 34, which is MMLF33.

20 BY MR. PARKER:

21 Q Again, there is no limitation when it comes to  
22 owners: is that correct, sir?

23 A That's correct.

24 Q All right. Now, be it Attachment A, Attachment B  
25 or in particular Attachment C, if you're vetting all owners

1 then you should also be able to vet all owners in terms of  
2 diversity; right?

3 A We didn't ask for all the shareholders. I don't --  
4 I didn't look at hardly any of the applications, but I didn't  
5 hear of any applicant submitting a list of shareholders.

6 Q Okay. Let me stop you there because you're kind of  
7 jumping ahead. We've agreed, I believe, that owners is not  
8 limited in any way on Attachment A, is that correct? It says  
9 owners. It doesn't say, you know, 10 percent owners, 20  
10 percent owners, it just says owners, is that correct?

11 A That's correct.

12 Q The word shareholder is not mentioned there, is that  
13 correct?

14 A Not in the application, but I think it's mentioned  
15 in the statute or the regulations of the 5 percent.

16 Q Okay. Well, let's say the regulation says 5 percent  
17 but the statute I believe says all owners. Isn't that  
18 correct?

19 A I'd have to go back and refer to that.

20 Q All right. I think you have --

21 THE COURT: You've got the book.

22 THE WITNESS: Yeah.

23 BY MR. PARKER:

24 Q You've got the book. Take a look at NRS 453D and  
25 you tell me what the statute says in terms of owners. And

1 then you can compare that to NAC. We'll pull that up if you'd  
2 like again. And I believe NAC says 5 percent. In fact, I  
3 have that on my iPad if you want to look at that and make it  
4 quicker.

5 Your Honor, can I approach?

6 THE COURT: You may.

7 BY MR. PARKER:

8 Q Okay. Here's the NAC.

9 A Yes.

10 MR. PARKER: I'm showing him NAC 453D, I believe  
11 255, Your Honor, that says the 5 percent. And then I think he  
12 has the book that shows the statute.

13 THE COURT: I'm there.

14 MR. PARKER: Thank you, Your Honor.

15 BY MR. PARKER:

16 Q Have you had a chance to look at it?

17 A Yeah, I read this. I can't find it in the statute  
18 yet, though.

19 (Pause in the proceedings)

20 THE WITNESS: I can't find it in the statute.

21 MR. PARKER: All right. Your Honor, may I approach?

22 THE COURT: You may.

23 THE WITNESS: What you're referring to.

24 BY MR. PARKER:

25 Q So it's either 453D.210 and it talks about owners,

1 officers, board members.

2 A Okay.

3 THE COURT: Are you in Section 5(f)?

4 MR. PARKER: I believe that's 5(f).

5 THE WITNESS: Yes.

6 THE COURT: I'm just checking.

7 MR. PARKER: Yep. That is correct, Your Honor.

8 BY MR. PARKER:

9 Q Have you read it now?

10 A Yes.

11 Q So would you agree with me that if you utilized the  
12 statute it takes you to this application Attachment A where it  
13 says owners, officers and board members, is that correct? Is  
14 that correct?

15 A Yes.

16 Q If you use the regulation, it says 5 percent, is  
17 that correct?

18 A Yes.

19 Q So then let's assume, since this doesn't say 5  
20 percent, that you were trying to comply with the statute as  
21 opposed to the regulation. Is that a fair assumption?

22 A Well, it says, "The persons who are proposed to be  
23 owners, officers or board members of the proposed marijuana  
24 establishment."

25 Q Which is weird to me because you really don't comply

1 with the statute or the regulations because proposed owners,  
2 officers and directors -- I'm sorry, board members is not  
3 mentioned in Attachment A, but nor is the 5 percent from the  
4 Administrative Code. So do you know how Attachment A -- or  
5 who decided the wording for Attachment A, since it doesn't  
6 comply with the statute or the regulations?

7 A I don't think that was changed from the 2014  
8 application process.

9 Q Despite the fact that diversity was added, is that  
10 correct?

11 A Diversity was.

12 Q Which requires a certain level of vetting for  
13 owners, officers and board members, is that correct?

14 A For diversity?

15 Q Yes.

16 A Can you repeat that question?

17 Q Yes. When diversity was added, it required that the  
18 evaluators and the DOT vet or consider the diversity of the  
19 owners, the officers and the board members, is that correct?

20 A Yes.

21 Q And to do so you actually have to list them, is that  
22 correct?

23 A Yes, on Attachment C.

24 Q Right. And in Attachment A you're still required to  
25 list owners, officers and board members, is that correct?

1           A     Yes.

2           Q     Not ones that are just 5 percent owners, but all of  
3 them because it doesn't say in keeping with the regulation  
4 only those with 5 percent or more, is that correct?

5           A     It doesn't state 5 percent.

6           Q     And it doesn't include prospective owners, which is  
7 described by the statute, is that correct?

8           A     Well, the prospective owners would be the ones  
9 applying for the license.

10          Q     It doesn't use the word prospective owners in  
11 Attachment A?

12          A     It does not.

13          Q     All right. So would you agree with me that  
14 Attachment A does not comply with the statute or the  
15 regulation?

16          A     I don't know if I can legally -- give that legal  
17 opinion if it complies or not.

18          Q     I'm going to help you out. I'm going to help you  
19 out with that. I'm going to take back the word comply. Would  
20 you agree that it does not match the wording of the of the  
21 regulation or the statute?

22          A     I would agree that it doesn't match the exact  
23 language.

24          Q     All right, good enough. Now, did you provide any  
25 training to the evaluators on how to determine whether or not



1 someone is an owner, be it 5 percent, 2 percent, 1 percent,  
2 anything like that?

3 A Again, they relied on the information that was  
4 provided in the application and compared it to what the  
5 Department had on record as the ownership structure.

6 Q That's fine. But did you provide any training to  
7 the evaluators on how to determine if someone has actually  
8 listed all of their owners and who would be an owner? Have  
9 you provided that training or did you provide that training?

10 THE COURT: To the evaluators?

11 MR. PARKER: To the evaluators.

12 THE COURT: Okay. Because he said something about  
13 an administrative assistant, so that's --

14 MR. PARKER: Right.

15 THE COURT: Okay.

16 MR. PARKER: And I was thinking he was considering  
17 those for a different reason.

18 THE COURT: Just give him a question.

19 BY MR. PARKER:

20 Q So that's -- I want you to answer that question, my  
21 question, which is did you train them on how to determine what  
22 an owner is?

23 THE COURT: The evaluators?

24 MR. PARKER: The evaluators. Yes.

25 THE COURT: Thank you.

1 THE WITNESS: I specifically did not.

2 MR. PARKER: Thank you.

3 THE WITNESS: I can't speak for the other trainers.

4 BY MR. PARKER:

5 Q All right. So at this point in our discussions, you  
6 didn't train on board members versus advisory board members,  
7 is that true?

8 A I didn't specifically.

9 Q You did not train on how to determine whether or not  
10 employees should qualify as an officer. You did not, is that  
11 correct?

12 A Whether a shareholder or a major officer?

13 Q Whether or not an employee would classify as an  
14 officer, you didn't provide that type of training, isn't that  
15 correct?

16 A I did not.

17 Q And then finally, you did not provide any training  
18 on how to determine whether or not someone was an owner or  
19 not, isn't that right?

20 A They did -- no, I did not.

21 Q Thank you so much. All right, now we can move on to  
22 something else.

23 THE COURT: Before you do that.

24 MR. PARKER: Yes.

25 THE COURT: Sir, you mentioned earlier that the

1 administrative assistant when the application came in would  
2 check it and compare it to the Department's records.

3 THE WITNESS: Yes, that's correct.

4 THE COURT: That was before it was given to the  
5 evaluators?

6 THE WITNESS: Yes.

7 THE COURT: Is that who reviewed the applications to  
8 determine if they were complete, the administrative assistant?

9 THE WITNESS: Yes, those same individuals.

10 THE COURT: So who made the decision that it was  
11 going to be the administrative assistants who were going to  
12 check to make sure they were complete?

13 THE WITNESS: That was part of the checking process  
14 that we had, so part of the training, the process that we went  
15 through was for the administrative assistants to review that  
16 application and within our evaluation sheets there is a check  
17 off of what they were looking for.

18 THE COURT: And are these the administrative  
19 assistants who are paid for by the State of Nevada and are in  
20 PERS, or is this the administrative assistants you hired  
21 through Manpower?

22 THE WITNESS: Hired through Manpower.

23 THE COURT: Okay.

24 BY MR. PARKER:

25 Q Did you train any of them?

1 THE COURT: Wait. I'm not done.

2 MR. PARKER: Oh, I'm sorry. I liked your questions,  
3 I wanted to jump in.

4 THE COURT: No.

5 MR. PARKER: Okay.

6 THE COURT: So you were relying upon the Manpower  
7 folks to make a determination as to whether the applications  
8 were complete?

9 THE WITNESS: Complete as far as content?

10 THE COURT: Well, that's what the statute requires,  
11 sir. You're supposed to determine if they're complete before  
12 you evaluate them.

13 THE WITNESS: Yes.

14 THE COURT: So who -- that's Manpower, too?

15 THE WITNESS: Yes.

16 THE COURT: Did the actual employees that are paid  
17 for by the State of Nevada and contribute in PERS, any single  
18 one of them actually review the applications?

19 THE WITNESS: They reviewed the ownership piece of  
20 it, the ownership structure.

21 THE COURT: We had State employees reviewing the  
22 ownership structure?

23 THE WITNESS: Yes. Yes.

24 THE COURT: And when was that occurring in the  
25 process?

1 THE WITNESS: At the very beginning.

2 THE COURT: So when the applications came in, who  
3 did that review?

4 THE WITNESS: There was a Program Officer III in  
5 that position.

6 THE COURT: I need a name.

7 THE WITNESS: Jeannine Sherrick-Warner.

8 THE COURT: And is she in Carson or here?

9 THE WITNESS: She's in Carson.

10 THE COURT: Okay. And so the applications would  
11 come in. That individual, Jeanine, would check the  
12 application and compare it to the records that were already in  
13 the Department's database?

14 THE WITNESS: Yes, that's correct.

15 THE COURT: And if there was a deviation from what  
16 was in the Department's database and what was in the  
17 application, what happened?

18 THE WITNESS: We would look to see if there was a  
19 transfer of ownership in the house. If there was, then we  
20 would compare it to what they were requesting the transfer of  
21 the ownership structure to be.

22 THE COURT: So that takes me to Exhibit 5025, which  
23 was introduced yesterday. It had to do with the transfer of  
24 ownership relating to GGB. Can you walk me through the  
25 investigation that was done when a transfer of ownership form

1 is received, understanding there were significant delays  
2 because of your staffing issues, can you just walk me through  
3 that process separately?

4 THE WITNESS: Sure. Is there an exhibit?

5 THE COURT: There is an exhibit, 5025. I don't have  
6 it. I wrote down the number yesterday with a note to ask you  
7 the question about it, so now I'm here.

8 THE WITNESS: Okay.

9 THE COURT: Mr. Koch introduced it.

10 MR. PARKER: 5025.

11 MR. KOCH: Do you want me to go get it for him?

12 THE COURT: Anybody have it? Here it is.

13 MR. KOCH: No, that's -- I believe it's 5026,  
14 actually. 5025 is the org. chart --

15 THE COURT: Okay.

16 MR. KOCH: -- and 26 is the transfer of interest.

17 THE COURT: All right. Let's go to 5026. So this  
18 is 5026. Before this letter got sent, okay, you signed it;  
19 right?

20 THE WITNESS: Uh-huh. I think so.

21 THE COURT: What did you do? What's the process  
22 before that gets signed?

23 THE WITNESS: So staff have a -- they have a  
24 checklist and a process that they follow. The requirements  
25 for transfer of ownership are in the regulation. They make

1 sure all the information is complete, that it's there. They  
2 vet all the owners, officers and board members that are listed  
3 in the application for transfer.

4 THE COURT: And when you say vet, what do you mean?

5 THE WITNESS: For background checks.

6 THE COURT: Okay.

7 THE WITNESS: State and FBI. Make sure they have an  
8 agent card if they fall in the category of needing an agent  
9 card. There's some estoppel certificates, depending on the  
10 percentage of transfer that's done. If it's 100 percent, an  
11 estoppel certificate needs to be included.

12 THE COURT: Okay.

13 THE WITNESS: I'm trying to think through the  
14 checklist. Agent cards, application, notarized signatures for  
15 all the exiting owners as well as the entering owners. That's  
16 pretty much it besides the paperwork.

17 THE COURT: So you said that you do vetting of the  
18 new people.

19 THE WITNESS: Uh-huh.

20 THE COURT: In this case there's a publicly traded  
21 entity. How did you vet the publicly traded entity?

22 THE WITNESS: We vetted the owners or the officers  
23 that they provided in the application.

24 THE COURT: And how did you determine if the  
25 information in the materials that were submitted requesting

1 approval of the transfer of ownership were accurate?

2 THE WITNESS: We rely on the information that's  
3 provided by the applicant.

4 THE COURT: And did you receive any information  
5 about ownership structure above 5 percent in accordance with  
6 the Nevada Administrative Code?

7 THE WITNESS: I'm sorry, can you repeat that, Your  
8 Honor?

9 THE COURT: So you said you looked at officers and  
10 directors.

11 THE WITNESS: Uh-huh.

12 THE COURT: Did you look at the ownership over 5  
13 percent?

14 THE WITNESS: We should have, yes.

15 THE COURT: Okay. Where?

16 MR. PARKER: I'm sorry, Your Honor. Did he say he  
17 should have to your --

18 THE COURT: Yes. That's why I said where.

19 MR. PARKER: Oh, good.

20 THE WITNESS: Wait. Will you stop it?

21 MR. PARKER: I just liked the answer. I just want  
22 to make sure I heard it right.

23 THE COURT: I have a question that I thought of  
24 yesterday for him and I'm trying to --

25 MR. PARKER: No, that was a good answer. I just --



1 I wanted to be sure he said that.

2 THE COURT: Now, remember, this is just one question  
3 I'm asking. It may sound like a lot of questions but it's  
4 just one.

5 THE WITNESS: That would have been done through the  
6 process of vetting. So when we vet individuals we look for  
7 their ownership percentage and then we compare it to whether  
8 they have a background check, need a background check or need  
9 an agent card. So that's where we determine the percentage of  
10 ownership.

11 THE COURT: Okay. Assume with me for a minute that  
12 there's somebody who has a 30 percent stake in this publicly  
13 traded company, because we heard some testimony about that  
14 yesterday. How would you determine if you were accurately  
15 provided with information about the ownership structure of  
16 that publicly traded entity?

17 THE WITNESS: As far as the shareholders go?

18 THE COURT: Uh-huh.

19 THE WITNESS: If they didn't provide the  
20 shareholders, we wouldn't know.

21 THE COURT: And you wouldn't do anything to check?

22 THE WITNESS: No. We don't check the shareholders.  
23 We don't ask for the information on them.

24 THE COURT: So if you have a 30 percent owner who's  
25 a member of the Mafia in Canada, there's no way you would

1 know?

2 THE WITNESS: Not if they didn't provide it to us.

3 THE COURT: Not if they don't tell you?

4 THE WITNESS: Right.

5 THE COURT: Okay, thanks.

6 Now, Mr. Parker, you may resume.

7 MR. PARKER: Thank you so much.

8 BY MR. PARKER:

9 Q In terms of the Program Manager III that you were  
10 just discussing with the Court, who trained that Program  
11 Manager III?

12 A A group of us, depending on -- she was doing  
13 transfers of ownership. That was her job. So there's many  
14 facets of that job.

15 Q Is it fair to say that she did not check the  
16 Secretary of State's records in terms of Nevada Organic  
17 Remedies relative to officers?

18 A I believe she did, yes. That's part of the  
19 application.

20 Q If she did and she found that there were officers  
21 listed by Nevada Organics that was not identified in the  
22 Secretary of State's records, wouldn't that raise some type of  
23 issue or concern?

24 A No, it wouldn't, because I think I said earlier that  
25 we don't compare what's listed in the Secretary of State's

1 website versus what's in the application.

2 Q So even if you saw a difference, you don't compare  
3 it?

4 A We look to see if they're registered with the  
5 Secretary of State and I think that's what the requirement is  
6 in the statute or the regs.

7 Q Okay, that brings it home. So you look just to see  
8 if the company is registered with the Secretary of State, you  
9 don't look at the list of officers or members or managers of  
10 it?

11 A No.

12 Q So you didn't do any comparison?

13 A We do -- well, we look to see if that one  
14 individual, one individual is there.

15 Q That's it?

16 A Yes.

17 Q All right. Okay.

18 THE COURT: Mr. Parker, I need to break because it's  
19 two o'clock and I've got to go do part of my Mental Health  
20 Court.

21 MR. PARKER: Oh, great.

22 THE COURT: This is not a requested break, so if you  
23 need to speak to your counsel, sir, you're welcome to.

24 MR. PARKER: Thank you, Your Honor.

25 THE COURT: Anything else, guys? Hopefully it will

1 take me less than 15 minutes. I only have one determination.

2 (Court recessed from 1:59 p.m. until 2:10 p.m.)

3 THE COURT: All right. Mr. Parker, you may  
4 continue.

5 MR. PARKER: Thank you.

6 THE COURT: Mr. Gilbert, I apologize again for  
7 making you wait so long yesterday and this morning.

8 THE WITNESS: That's okay. Thank you, Your Honor.

9 MR. PARKER: No worries. So when I left off --

10 THE COURT: I didn't apologize to you. I was  
11 apologizing to Mr. Gilbert.

12 MR. PARKER: I'm accepting it for the whole room,  
13 Your Honor.

14 THE COURT: Oh, okay.

15 MR. PARKER: That's it. Mr. Gilbert included.

16 BY MR. PARKER:

17 Q Mr. Gilbert, when we left off I wanted to follow up  
18 with some of the Court's questions, mainly who trained the  
19 Program Manager III, because we went into who trained or did  
20 not train the evaluators in certain areas, the owners,  
21 officers and board members. Who trained Program Manager III  
22 on vetting owners, officers and board members?

23 A That would have been myself, as well as other  
24 individuals within the Department that had differing tasks  
25 such as agent card approvals, background checks.

1 Q Good enough. So I believe your answers will be  
2 similar, but I want to make sure. In terms of Program Manager  
3 III's training relative to board members, did you give that  
4 person a definition of the words, board members?

5 A Can I -- the position is a Program Officer III.

6 Q Not program manager?

7 A It's not a program manager.

8 Q Okay, I'm sorry. So Program Officer III?

9 A Yes.

10 Q Okay. Sorry about that. Thank you. So did you  
11 train the Program Officer III on the definition of a board  
12 member?

13 A Probably through discussions and reviewing of  
14 applications she was trained.

15 Q Okay. Anything in written form?

16 A No.

17 Q Did you provide a definition?

18 A Possibly. Not that I can recall.

19 Q Would your answer be the same in terms of advisory  
20 boards? Did you give her a definition of an advisory board?

21 A Yeah, we reviewed the same.

22 Q Okay. So you did not give her a definition of  
23 advisory board?

24 A I don't think I've ever handed out definitions of  
25 those categories.

1           Q     All right. And that would mean you didn't give her  
2 any training on how to determine whether or not to include an  
3 advisory board member in a diversity calculation, is that  
4 correct?

5           A     Well, again, a lot of questions do arise during  
6 transfers of ownerships and she may have been trained at that  
7 point.

8           Q     Okay. But I'm not asking about that, I'm asking  
9 about your direct training of the Program Officer III in terms  
10 of whether or not to include an advisory board member in a  
11 diversity calculation. Did you provide any training in that  
12 regard?

13          A     No, because diversity -- she was just processing  
14 transfers of ownerships where diversity isn't taken into  
15 account.

16          Q     Good enough. So that ends the board member  
17 questioning. How about in terms of officers, would that also  
18 mean that you didn't provide any training to the Program  
19 Officer III relative to when an employee would be considered  
20 an officer?

21          A     It would be the same. However, it's the information  
22 that they provided in their application.

23          Q     Which also means you didn't provide any training in  
24 determining whether or not an officer, be it an employee or a  
25 non-employee officer, would be included in the diversity

1 calculation, is that correct?

2 A I don't remember those issues ever coming up, so  
3 wouldn't have been trained.

4 Q Okay. So no training in that regard as well. How  
5 about in terms of owners? The judge asked you some real  
6 pointed questions regarding --

7 THE COURT: Hypothetical questions.

8 BY MR. PARKER:

9 Q Hypothetically-pointed questions whether or not an  
10 owner would include a shareholder. Did you understand that  
11 question before?

12 A I did. Yes.

13 Q All right. Did you provide the Program Officer III  
14 with training on determining whether or not a shareholder  
15 should be considered an owner for which you would require  
16 disclosure in Attachment A?

17 A No specific training module, per se, but we didn't  
18 require shareholders to be listed, so that was probably the  
19 extent of the training.

20 Q Good enough. So there was never any training to the  
21 administrators, the Program Officer III, which is an employee  
22 of the State, or the evaluators on who should be included in  
23 the owner's category under Attachment A, is that correct?

24 A I don't -- the administrators?

25 Q Yeah. There are two administrators for the

1 evaluators. I just wanted to make sure I included them in  
2 this question.

3 A Okay. The administrative assistants?

4 Q Yes.

5 A Okay, thank you.

6 Q Isn't that a true statement, sir?

7 A Can you repeat it?

8 Q Yes. You didn't provide any training to the Program  
9 Officer III, the six evaluators or the two administrators,  
10 which are also a part of the Manpower group, on determining  
11 whether or not shareholders should be included in the owners  
12 disclosure?

13 A I think we did because shareholders were not  
14 required in the application, so that was -- I don't know if I  
15 was specifically asked that question --

16 Q Okay.

17 A -- but it never came up during the evaluation  
18 process of where's the shareholders --

19 Q So is it --

20 A -- in this publicly traded company.

21 Q I'm sorry, I didn't mean to interrupt you. So is it  
22 fair to say that no investigation was done by anyone, be it  
23 State employee or non State employee into the shareholders of  
24 any applicant?

25 A The Department did not vet shareholders of the



1 publicly traded companies. We didn't require that to be  
2 submitted.

3 Q And you would agree with me that the application  
4 does not exclude shareholders?

5 A It asks for officers.

6 Q Owners.

7 A And board members.

8 Q Right. It does not exclude shareholders, is that  
9 correct?

10 A It doesn't exclude them. Right.

11 Q All right. And would you agree with me that the  
12 Administrative Code by indicating 5 percent or greater would  
13 include shareholders?

14 A I don't know if I'm the right person to ask that  
15 legal question. It's the owners.

16 Q Right. So if you own 6 percent of a company, you  
17 would be required pursuant to the regulations to be disclosed  
18 by the applicant, isn't that correct?

19 A If they're an officer of the corporation, is what we  
20 required in the application.

21 Q Okay. But it says owner comma officer comma board  
22 member. It doesn't say owner or officer, or owner or board  
23 member, it includes all three; right?

24 A We would expect that applicant to provide the  
25 information of their owners, officers and board members.

1           Q     Right. And so that's pursuant to the regulations,  
2 but if you consider the statutory framework, 453D.210 (f)5,  
3 that means even a 1 percent shareholder should be listed and  
4 disclosed under the application, Attachment A, isn't that  
5 correct?

6           A     I don't know if that's my decision to make or my  
7 interpretation of the statute, but you know, the Department at  
8 some point in time decided not to require shareholders just  
9 because of the extent of, you know, it changes daily, it  
10 changes hourly.

11          Q     Did you say that to anyone in this form? Does it  
12 say in Attachment A anywhere that we're not going to require  
13 you to comply with the statute or the regulations because we  
14 don't have time to look into it? Does it say anything like  
15 that? And I'm paraphrasing what you said, but I just want to  
16 know, is there anywhere in this application where I could find  
17 that type of language?

18          A     Not that I'm aware of, no.

19          Q     All right. Now, I want you to compare that  
20 obligation in terms of disclosure to another obligation in the  
21 application. The application requires you and it takes into  
22 consideration the amount of taxes paid, is that correct?

23          A     Yes.

24          Q     Now, when it comes to taxes paid, would that be  
25 taxes paid by the applicant into Nevada or all taxes paid?

1           A     By the applicant.

2           Q     Right. And is it all taxes paid only in Nevada or  
3 taxes paid throughout the world?

4           A     It says to the State of Nevada.

5           Q     I'm sorry?

6           A     It says to the State of Nevada.

7           Q     All right. And would that include every owner,  
8 potentially?

9           A     The more information they provided us, the better  
10 off they were in their application.

11          Q     Well, doesn't that mean that owners perhaps not  
12 identified on Attachment A would get the benefit of having  
13 paid more money into Nevada but not be disclosed for purposes  
14 of diversity?

15          A     Sorry, can you repeat that?

16          Q     Okay. Let me see if I can break it down for you. I  
17 was struggling with this a little bit myself over the weekend.  
18 Let's say that ABC Company, a very large company, pays a ton  
19 of taxes into Nevada, okay, but in terms of Attachment A they  
20 don't want to disclose all of the owners of the big company,  
21 and because of what you just said the Department decided they  
22 didn't need to list all of their shareholders. Understood?  
23 But all of those shareholders and all of those owners are  
24 getting credit for the amount of taxes they paid into Nevada  
25 for purposes of scoring. Understood so far?

1           A     I think so.

2           Q     Wouldn't it be the right thing to do that if they're  
3 getting credit for taxes paid that they should also -- they  
4 should also be identified in accordance with Attachment A?

5           A     I would think that they would be.

6           Q     That's right. And if they weren't, then the State  
7 is not -- is giving them credit for taxes but not requiring  
8 them to be disclosed in one of the other attachments like  
9 Attachment A, is that correct?

10          A     Well, I'm not -- I don't know if this -- it might  
11 be a hypothetical. I don't know. I'd have to look at  
12 applications and see if that was actually a fact.

13          Q     And the same could be true in terms of diversity.  
14 If you're taking all of the owners who were making whatever  
15 amount of money and contributing to our tax base, but not  
16 identify them for purposes of diversity, then -- in terms of  
17 the diversity calculation, then they're getting a benefit  
18 without and finding a way to gain the diversity portion of the  
19 application because if they were to list everybody then they  
20 would dilute the denominator for the diversity calculation?  
21 Do you understand the question?

22          A     No. Can you repeat it?

23          Q     So if you have 100 owners contributing 10 million  
24 dollars of taxes a year to Nevada but you only identified 5  
25 because you know if you identify the other 95 your diversity

1 calculation you would lose points. Do you understand that?

2 A Uh-huh.

3 Q Is that a yes?

4 A I do. Yes.

5 Q Okay, good. So if you're going to get credit for or  
6 try to get credit for a higher diversity level without naming  
7 all of your owners, aren't you gaming the application process  
8 by not identifying them for purposes of ownership?

9 MS. SHELL: Objection. Argumentative.

10 THE COURT: And by gaming you mean manipulating?

11 MR. PARKER: Exactly, Your Honor.

12 THE COURT: All right. I'm just checking.

13 MR. PARKER: No, that's exactly right.

14 THE COURT: There was an objection.

15 MS. SHELL: Yeah. Argumentative, Your Honor.

16 THE COURT: Overruled.

17 MS. SHELL: [Inaudible].

18 BY MR. PARKER:

19 Q Isn't that true, sir?

20 A Well, I mean, the information that they provided in  
21 the application, I'd have to look at specific applications to  
22 see what the evaluators -- how they evaluated it. I don't  
23 know if that is the case.

24 Q But based upon what I just told you, that could  
25 happen. That could be used -- that's a form of manipulating

1 the application process?

2 A Well, the evaluators looked at the org. chart,  
3 Attachment A, Attachment C and compared that to see what the  
4 -- I guess the denominator should have been or should be.

5 Q Right.

6 A And then whatever is listed on Attachment C was used  
7 for the calculation of diversity.

8 Q Right. But, for example, you used Nevada Organics  
9 as an example and they didn't list all of their owners, all of  
10 their shareholders. There could have been thousands. But  
11 they got -- was it 8 or 14 points? They got 18 diversity  
12 points --

13 MR. KOCH: Eight.

14 MR. PARKER: Eight?

15 BY MR. PARKER:

16 Q They got 8 diversity points because if they had  
17 listed all of those owners then the comparison between diverse  
18 and non-diverse would then reduce their points under  
19 diversity. Do you understand?

20 A I do understand.

21 Q Right. And that's a way of manipulating the scoring  
22 under the application process if you don't require them to  
23 identify all of the owners. Isn't that true?

24 A The Department didn't require --

25 Q I didn't say the Department.

1           A     -- shareholders. I guess in the mathematical scheme  
2 of things it's true.

3           Q     That's right. That is right. A company or an  
4 applicant like Nevada Organics can manipulate the system or  
5 the application process by not disclosing the number of owners  
6 for purposes of diversity, Attachment A, but then use the  
7 benefit of all those owners for purposes of the tax portion of  
8 the application, isn't that correct?

9                     MR. KOCH: Objection. Misstates facts in evidence.

10                    THE COURT: Overruled.

11 BY MR. PARKER:

12           Q     Isn't that correct, sir?

13           A     I'd have to look at the application. What I've seen  
14 of it was just what I saw --

15           Q     But could that be done, sir?

16           A     I don't know. I'd have to look at the application.  
17 I mean, if they bounce up that denominator, yes.

18           Q     Thank you. Now, did you train the either the  
19 Program Officer or the evaluators to compare tax bases for  
20 those who are contributing to the taxes versus diversity or  
21 the disclosure under Attachment A?

22           A     I did not. That would have been done by one of the  
23 trainers.

24           Q     Okay. So you didn't do that?

25           A     No.

1 Q Okay. So if you look at Exhibit 5, page 25, which  
2 is MMLF36, this is the diversity section. And I wanted to --  
3 do you see the large boxes in the middle?

4 A Yes.

5 Q It says, "Describe the individual's title, role in  
6 the organization and the responsibilities of the position of  
7 the individual." Do you see that?

8 A Uh-huh. I do.

9 Q You do? Now, was it your responsibility or not your  
10 responsibility to train the evaluators on determining when an  
11 employee would be included in a diversity calculation?

12 A The application, Attachment C, requires the  
13 applicant to put their information there which was used for  
14 the diversity, which is in the application instructions. So  
15 when we went through the application originally --

16 Q Yes, sir.

17 A -- and compared it to the evaluation sheets, they  
18 were trained at that point.

19 Q All right. So take a look -- let's go back for one  
20 second to page 18 of 34, which is MMLF29. So if you look  
21 under 6.2, the last sentence of 6.2 -- if we could blow that  
22 up -- it says, "Ranking will be based on compliance with the  
23 provisions of R092-17, Section 80, Chapter 453D of NRS and on  
24 the content of the applications relating to." And then 6.2.2  
25 says, "Diversity of owners, officers and board members." Do



1 you see that?

2 A Yes.

3 Q So it requires, the application requires compliance  
4 with the statute, not the regulation; right? Or do you  
5 consider the regulation and the statute having to be required  
6 -- of being complied with?

7 A Well, the regulations were written based on the  
8 statute.

9 Q Okay.

10 A And that's where we pulled the criteria for the  
11 evaluation from the regulations.

12 Q All right. But you've already told me -- I want to  
13 make sure I'm clear on this -- in terms of the statute it does  
14 not indicate how the scoring was to be done, it just simply  
15 said diversity; right?

16 A I'd have to go back and look.

17 Q Okay. All right. You have it in front of you,  
18 don't you?

19 A I do.

20 Q So take a look.

21 MR. PARKER: May I approach, Your Honor?

22 THE COURT: You may. It's that Exhibit 5 we're  
23 looking at?

24 MR. PARKER: No. This is the actual statute.

25 THE COURT: Okay. 453D.

1           While Mr. Parker is looking at it, I only got two  
2       briefs on my convenient word. I got one from Mr. Gentile and  
3       one from the State. Anybody else sending me one?

4           MR. HONE: Your Honor, we'll be filing ours this  
5       afternoon.

6           THE COURT: Okay. Thank you.

7           MR. PARKER: Your Honor, that's actually in the reg,  
8       in the Administrative Code.

9           THE COURT: Okay. So do we need to go to the  
10      Administrative Code for the witness?

11          MR. PARKER: We will, Your Honor, but let me see if  
12      I can avoid it for one second.

13          THE COURT: Thank you.

14      BY MR. PARKER:

15          Q     The application at 6.2.2 says, "Diversity of owners,  
16      officers and board members." Do you see that?

17          A     Yes.

18          Q     All right. So in terms of the training that we were  
19      discussing a little while ago, I wanted to know if it's not in  
20      the statute and it's in the reg but there's no scoring that's  
21      included in the reg or the statute, I think you told me that  
22      Mr. Pupo came up with the scoring method, is that correct?

23          A     Yeah. I mean, ultimately yes, but it was talked  
24      about through the evaluation or the application or the  
25      evaluation sheets.

1           Q     Do you believe that the scoring is consistent with  
2 either the Administrative Code, the regulations, or the  
3 statute?

4           A     Can you be more specific?

5           Q     Yeah, this is my point. The sentence says that it's  
6 compliant with the statute an the reg, but we know that the  
7 reg nor the statute has a scoring methodology included. So  
8 how would an applicant know how the scoring would be done and  
9 whether or not it would be consistent with either the statute  
10 or the reg? Did you provide any information with regards to  
11 that either in the Listserv or anywhere?

12          A     Well, it says ranking will be scored. And I don't  
13 recall -- I don't recall if we did it on Listserv or not. I'd  
14 have to go back and look.

15          Q     Okay. You didn't -- you don't recall doing it  
16 yourself?

17          A     I don't do Listservs.

18          Q     Okay. No, no. Do you recall providing that  
19 information on how the scoring would be done to anyone?

20          A     I don't. No.

21          Q     Okay. And you agree with me in terms of this  
22 document if someone was simply relegated to the statute or the  
23 regulation, the scoring methodology wouldn't be there, you  
24 couldn't find it there?

25          A     Well, the score methodology should be kept at the

1 Department, confidential in the Department. Otherwise  
2 everybody would know how to get 250 points.

3 Q So in terms of if you're not training the Program  
4 Officer or the evaluators on how to include or whether to  
5 include advisory board members or employees, how would they  
6 know what to do for scoring?

7 A Well, the scoring criteria breaks it down for the  
8 percentages, like we've been talking about. And whatever they  
9 provide on Attachment C is the information that was used to  
10 score diversity.

11 Q But doesn't that also mean that the evaluators were  
12 not actually complying with the statute or the regulation when  
13 they did their scoring because it's not found in any of these  
14 -- in either -- the scoring methodology is not found in the  
15 statute and it's not found in the regulation. So if the  
16 scorers were not trained and you've told me now already they  
17 weren't trained on how to discern an advisory board member  
18 from a regular board member, how to classify an employee  
19 versus an officer, how would they be able to do the scoring  
20 without that training?

21 A Well, they were able to discern. I mean, these were  
22 -- these were experienced professionals that have pretty good  
23 background. They're able to look at the org. chart, look at  
24 the percentages of ownership, look at the positions and then  
25 apply it to Attachment C and Attachment A.

1 Q Without any training?

2 A Well, they were trained on, you know, owners,  
3 officers and board members as they should appear in Attachment  
4 C.

5 Q And yet despite all that, we've now learned that  
6 advisory board members were used in diversity calculations,  
7 isn't that correct?

8 A I'd have to look at the application. I'm not sure.

9 Q We've learned that purchasing directors have been  
10 used in diversity calculations, isn't that correct?

11 A Again, I'd have to look at the application. I  
12 wasn't able to see it.

13 Q Good enough. Okay. I want to skip over to discuss  
14 some of the training, okay, and your -- in particular your  
15 role in this training that was done. You indicated that you  
16 trained the evaluators but you had help from other members of  
17 your team, is that correct?

18 A Yes, that's correct.

19 Q And every team member had a certain responsibility.  
20 Is that correct or incorrect?

21 A That's correct.

22 Q So if we could look at -- I believe it's Exhibit 205  
23 and I'd like to look at page DOT17.

24 MR. PARKER: Is 205 stipulated to?

25 MR. SHEVORSKI: Yes. It's my document.

1 MR. PARKER: Thank you. If we could look at DOT 17.

2 BY MR. PARKER:

3 Q Now, this is a reminder about confidentiality, but  
4 it identifies you as a Program Manager, is that correct?

5 A Yes, that's correct.

6 Q And that's the position you held while you were  
7 training the evaluators for purposes of the 2018 application  
8 process?

9 A Yeah. Technically it's Health Program Manager.

10 Q Okay. Is there a difference between a program  
11 manager and a health program manager?

12 A Health would be more health related. Program --

13 Q Don't say more program related. Please don't say  
14 that.

15 A I don't know if there is any program manager  
16 positions, not at the Department of Taxation.

17 Q Okay. So what I want you to take a look at now,  
18 then, is DOT23 because I believe these are your primary  
19 responsibilities. Is this a fair representation of your  
20 responsibilities?

21 A Yes, it is.

22 Q The second big heading says, "Primary instructor for  
23 application evaluation." Is that correct?

24 A Somewhat. My main goal or my main duty was to make  
25 sure that the training took place, it was coordinated, people

1 were there, people had the information that they needed. Ky  
2 Plaskon took the lead role on facilitating the training. And  
3 then we brought in the staff that had experience in the proper  
4 areas.

5 Q But it says, "Primary instructor for application  
6 evaluation." Did you or did you not fulfill that  
7 responsibility?

8 A I probably -- I probably did not.

9 Q You did not?

10 A Because we relied on the other -- the other staff  
11 that have more experience than I do in their specialties.

12 Q Okay.

13 A I'm more of a general administrative position  
14 person, whereas like Kara Cronkhite, she's a registered  
15 environmental health specialist. Damon Hernandez, he has an  
16 MBA, a lot of financial and auditing background. Ky Plaskon,  
17 who you met the other day, is obviously a pretty good teacher.  
18 I think he probably brought that across, I don't know. So we  
19 relied on -- we relied on other staff to fulfill, because I'm  
20 definitely not -- you know, I'm not a registered environmental  
21 health specialist like Kara. She went to school for that and  
22 has been registered and certified.

23 Q All right. So I will tell you I'm surprised that  
24 you are now saying that you're not the primary instructor  
25 because I thought that this document would give me an

1 understanding as to what your role was in this process. Do  
2 you have -- let me ask you a few questions, then. Who would  
3 be considered the primary instructor? Would it be Ms.  
4 Cronkhite, Mr. Hernandez, Mr. Plaskon?

5 A You know, I think it depends on the module that was  
6 being trained on. So, for example, my primary portion would  
7 be the history of the program, the history of the medical  
8 marijuana program, the application, how the process was done  
9 in 2014. The application -- well, I went through the  
10 application line by line and then we went through the  
11 evaluation criteria together. And then we brought in the  
12 other primary instructors, I guess you could call them, would  
13 be Kara Cronkhite. She went over more of the nonidentified  
14 section. That's the floor plan layout, the health and safety  
15 of the product, care, quality and safekeeping. And then Damon  
16 Hernandez, who has a history with taxation, a history with  
17 auditing, like I said, an MBA, he was brought in to do the  
18 identified section.

19 Q The identified section?

20 A Yeah.

21 Q All right. It says also, "Oversees all evaluators."  
22 Did you do that or not?

23 A Yeah, and then we kind of devolved into a pattern  
24 of, you know, Ky Plaskon being the go-to guy for information  
25 and stuff. I mean, I got really busy. So, like check-ins,



1 check-outs during the day, we had another Program Officer III,  
2 Diane O'Connor, who also helped, you know, approve time sheets  
3 and that kind of stuff.

4 Q And Ms. O'Connor, is she an employee of DOT?

5 A Yes, she is.

6 Q All right. How about quality assurance, did you  
7 perform any of that?

8 A I did. Not on the application evaluations, but on  
9 the final product when the score and rankings were provided to  
10 management.

11 Q So we heard by Mr. Plaskon that the evaluators  
12 served as their own quality control. Do you recall hearing  
13 that?

14 A I wasn't --

15 Q You weren't here when he said that?

16 A I wasn't here.

17 Q Is that truly your -- do you recall that being the  
18 case as well?

19 A Quality assurance, I don't -- I didn't know what the  
20 question was.

21 Q Okay. Do you recall whether or not the evaluators  
22 were tasked with evaluating or providing quality control over  
23 their evaluations?

24 A Yes, they were. They were left to be independent.

25 Q Okay. Were there any DOT employees that provided

1 quality control or quality assurance with regards to the  
2 evaluations?

3 A Can I get possibly a definition of quality  
4 assurance?

5 Q Certainly. Quality control typically means you're  
6 looking at an individual scoring to see if there's a  
7 relationship between the scoring and the information there.  
8 Quality assurance is the process of doing it. So were there  
9 any DOT employees that went over, took a sample application,  
10 went through the information provided and the scoring to see  
11 if it made sense what the evaluators came up with?

12 A That was just done during the mock application  
13 training period, which lasted about five, six days. That's  
14 it.

15 Q So nothing after the fact?

16 A No, because then we'd be evaluating the application  
17 a second time.

18 Q Which means that when your application said in the  
19 beginning that State employees and/or officers would be  
20 involved in the evaluation process, that was not a true  
21 statement on the back end in terms of scoring, is that  
22 correct?

23 A State employees did not evaluate any applications.

24 Q They did not perform any quality control or quality  
25 assurance?

1           A     As far as the evaluators, checking or questioning  
2 their quality --

3           Q     Exactly.

4           A     -- of work through their -- No, that was not done.

5           Q     Thank you so much. So in terms of you being the  
6 Program Manager and actually doing quality assurance, you  
7 didn't do that in terms of the scoring, is that correct?

8           A     Well, my quality assurance was -- no, I would never  
9 second guess an evaluator's score.

10          Q     All right. Thank you. Now let me have you take a  
11 look at DOT24. This is Mr. Plaskon's role and responsibility.  
12 It said that he would do the room preparation coordination.  
13 See that?

14          A     Uh-huh.

15          Q     Is that a yes?

16          A     Yes.

17          Q     All right. I'm not trying to be a stickler, but we  
18 have to get an affirmative yes or no on the record --

19          A     I understand.

20          Q     -- as opposed uh-huh.

21                 But I thought that's what you said you did. Thought  
22 you were doing the room preparations. Were not? Or were you  
23 both doing it?

24          A     My role is to work with the executive level at  
25 Department of Taxation, make sure we had the room available.

1 We all worked together to set up the IT stuff. Yeah, I mean,  
2 I worked with the director and administrative services officer  
3 to make sure that we had a space for the applicants -- or for  
4 the evaluators.

5 Q You mean evaluators.

6 A Yeah.

7 Q Okay. You indicated just a moment ago that you were  
8 the one adapting the 2014 to the 2018 application. It says  
9 here that Mr. Plaskon was doing it.

10 A He was part of that group.

11 Q Okay. All right. DOT25 is the Program Officer III.  
12 That's Diane O'Connor; is that correct?

13 A Yes.

14 Q All right. And then if you go DOT26, this is the  
15 person you mentioned earlier when you were speaking to the  
16 Court regarding Jeannine Sherrick-Warner; is that correct?

17 A Yes, that's correct.

18 Q All right. And she was tasked with ownership  
19 verification; is that correct?

20 A Yes.

21 Q Now, was this ownership verification done prior to  
22 giving the applications to the evaluators?

23 A Yes, it was.

24 Q And was this the ownership verification that only  
25 includes looking at what the DOT had within its own data

1 files?

2 A Yeah. We compared it to what was on record with the  
3 Department.

4 Q There was no other ownership verification measures  
5 taken; is that correct?

6 A Not at this point, no.

7 Q At any point. Is that correct?

8 A I guess that's an accurate statement.

9 Q Thank you.

10 THE COURT: And, sir, that's the person you  
11 identified for me?

12 THE WITNESS: Yes, it is, Your Honor.

13 THE COURT: Thank you.

14 BY MR. PARKER:

15 Q Now, it says, "Location review assistants." What  
16 does that mean?

17 A I've got be honest. I don't know.

18 Q I appreciate an honest answer.

19 A It was in the PowerPoint. I don't -- you know,  
20 there could be typos in this PowerPoint.

21 Q Well, the words spell -- all spell correctly.

22 A Yeah, I know. Yeah.

23 Q For some reason when I read this I thought it meant  
24 that there would be some exercise involving determining  
25 whether or not locations utilized by applicants would be

1 reviewed. That's what I took it to mean.

2 A Not --

3 Q You don't have that understanding?

4 A I don't.

5 Q Do you know if that was done?

6 A Location reviews? That wasn't required in the  
7 application, so we didn't review the locations.

8 Q You know, I've heard that more than once today. But  
9 the application actually has a spot for locations; isn't that  
10 correct?

11 A I'd have to look at what you're referring to.

12 Q All right. So you had not seen the -- you're not  
13 familiar enough with the application to know that the  
14 application requires or actually has a location block or spot  
15 for you to put the location of your intended establishment?

16 A If I recall correctly, there is a box that says, if  
17 you have a location put it here.

18 Q Okay. So if we were to take a look at the locations  
19 provided by Nevada Organics --

20 MR. PARKER: Your Honor, have we utilized D4 yet?

21 THE COURT: D4?

22 MR. PARKER: D, as in David, 4.

23 THE COURT: Yes.

24 THE CLERK: Well, this was the one that Mr.  
25 Cristalli --

1 THE COURT: We used certain pages of D4, didn't we?

2 THE CLERK: Yesterday. It was on his laptop, but I  
3 have a paper copy.

4 THE COURT: He gave us paper copies this morning, so  
5 we have it.

6 MR. PARKER: Perfect.

7 (Pause in the proceedings)

8 BY MR. PARKER:

9 Q All right. So Mr. Cristalli here has given me  
10 DOT041840.

11 THE COURT: All right. We're going to give the  
12 witness a copy.

13 MR. PARKER: Yes.

14 (Pause in the proceedings)

15 BY MR. PARKER:

16 Q So looking at -- do you have DOT041840 in front of  
17 you?

18 A Yes.

19 Q Okay. And if you look at RD316 and RD329, I want  
20 you to compare those locations and tell me if they're the same  
21 locations. Tell me if you can -- if you recognize that those  
22 are both the same documents -- same addresses. I'm sorry.

23 A It looks like there's different suites.

24 Q Okay. Same address, different suite numbers?

25 A Yeah.

1           Q     Okay.  Would you agree with me that the suite  
2 numbers start at the same, it says 215, and then one says -  
3 147, the other one says 215-155.

4           A     Yes.

5           Q     All right.  So --

6                         (Pause in the proceedings)

7           MR. HYMANSON:  No objection, Your Honor.

8           THE COURT:  Be admitted.  What's the number?

9           MR. PARKER:  This I guess will be the next in order,  
10 but it's --

11                  What is the exhibit number to this, Mr. Shevorski?  
12 Do you know?

13           MR. SHEVORSKI:  I don't know that it has an exhibit  
14 number.

15           MR. PARKER:  I've got a Bate number, Your Honor.  We  
16 could do it next in order.

17           THE COURT:  Has it been marked as an exhibit yet?

18           MR. SHEVORSKI:  I don't believe so, Your Honor.

19           THE COURT:  So why don't you mark it next in order,  
20 Mr. Parker.

21           MR. PARKER:  I will do just that.

22                  And what would that be, Madam Clerk.

23           THE COURT:  She wants you to bring it up here so she  
24 can figure it out and put a stamp on it.

25           MR. PARKER:  I will bring it to her.



1 THE CLERK: We don't have a range for you yet, so  
2 you'll be 300. 301.

3 MR. PARKER: I like 301.

4 (Plaintiffs' Exhibit 301 admitted)

5 THE COURT: Mr. Hymanson, do you need to approach,  
6 too?

7 MR. PARKER: I'm only going to use the first page,  
8 Your Honor. I'm keeping the stack the way it is.

9 (Pause in the proceedings)

10 THE COURT: Page 1.

11 (Pause in the proceedings)

12 MR. PARKER: So 302 is the Essence. Anybody have an  
13 issue with that?

14 MR. KOCH: I don't have -- yeah. I mean, just as  
15 long as I get a copy.

16 THE COURT: 301 is only one page, though.

17 MR. PARKER: That's only one page, which is Thrive.

18 THE COURT: And, Dulce, you have 301 as a single-  
19 page document. I know. That's what I'm saying. It's a  
20 single page.

21 Who has the one with the sticker?

22 MR. PARKER: I've got them both.

23 THE COURT: Give the one to Dulce, because you've  
24 got to only have one page. You said it was a single page  
25 pursuant to your agreement with Mr. Hymanson.

1 MR. PARKER: That is correct, Your Honor. I just  
2 don't want to take them apart, because --

3 THE COURT: But you've got to now take it apart.

4 (Pause in the proceedings)

5 MR. PARKER: Can I show those to the witness?

6 THE COURT: You may.

7 So 301's been admitted, but it's a single-page  
8 document. And what about 302?

9 MR. HYMANSON: No objection to the single-page  
10 admission of -- the first page of 302.

11 THE COURT: 302 as a single page will be admitted.  
12 Thank you. I appreciate your courtesy, Mr. Hymanson.

13 (Plaintiffs' Exhibit 302 admitted)

14 THE COURT: We're using the Elmo.

15 BY MR. PARKER:

16 Q So I have Exhibit 301 on the Elmo. And the reason I  
17 put it on the Elmo, Mr. Gilbert, is just so everyone else in  
18 the room can see it. But this is the application, you can  
19 see, from Thrive. And you can see the address that we just  
20 spoke of from I think it was D4, which was DOT041840. You see  
21 it?

22 A I do.

23 Q Is the address the same?

24 A Yes, it is.

25 Q All right. And let me show you Exhibit 302. This

1 is the Essence application Attachment A. Would you agree  
2 again that the application includes the address of 5130 South  
3 Fort Apache Road, Suite 215 through 147?

4 A Yes.

5 Q All right. Now, did you provide any training to the  
6 evaluators on their review of the locations or the addresses  
7 provided in these applications?

8 A The training -- well, the location wasn't required,  
9 so they weren't trained on verifying a location.

10 Q If location was not required and they were not  
11 provided any training on location, how would you determine the  
12 impact on the community?

13 A I think I mentioned earlier that we would look at  
14 the application, the contents of the application, the  
15 comprehensive information that they provided, and evaluate it  
16 appropriately.

17 Q Okay. But that would not necessarily tell you where  
18 in the community the establishment would be located; is that  
19 correct?

20 A We would know the jurisdiction, the evaluators would  
21 have.

22 Q Well, if you use that address that was contained in  
23 both those applications, this would be what you would see.

24 MR. PARKER: Your Honor, this is a demonstrative.  
25 This is --

1 (Pause in the proceedings)

2 THE COURT: Okay. So we're going to use the  
3 demonstrative exhibit that's been identified and it's now  
4 going to bear the next demonstrative in order.

5 THE CLERK: D7.

6 MR. PARKER: May I approach?

7 THE COURT: You may.

8 MR. PARKER: May I approach the witness, Your Honor?

9 THE COURT: You may.

10 MR. PARKER: So just for purposes of the room, this  
11 is a -- the result of a Google Maps search performed today,  
12 June 11, 2019, which it says at the top left corner.

13 BY MR. PARKER:

14 Q And then if you go below to the bottom, this is a  
15 street view and it says -- you can see the information pulled  
16 up through Google Maps, and it says 5130 South Fort Apache  
17 Road. Do you see that?

18 A I do, yes.

19 Q Is that the same address that's contained in the  
20 applications for both Thrive and Essence?

21 A Yeah. The 5130 South Apache Road is the same.

22 Q And would you agree with me that in terms of  
23 determining from an evaluation standpoint the impact on the  
24 community it would be difficult to use this location for that  
25 evaluation?

1           A     Do mind repeating that question, sir?

2           Q     Yes.  Wouldn't it be difficult to use a UPS Store  
3 location in determining whether or not there be an impact on  
4 the community as a part of the non-identified criteria?

5           A     Well, the evaluators didn't take into account the  
6 location when they evaluated the impact on the community.

7           Q     Okay.  And let me have this --

8                 MR. PARKER:  Any objection?

9                 MR. HYMANSON:  No objection, Your Honor.

10                THE COURT:  And is this another demonstrative  
11 exhibit?

12                MR. PARKER:  It is, Your Honor.  It'd be D8.

13                THE COURT:  Okay.

14                               (Pause in the proceedings)

15                MR. PARKER:  May I approach, Your Honor?

16                THE COURT:  You may.

17 BY MR. PARKER:

18           Q     Now, D8 is again pulled up this morning, today, June  
19 11, 2019, and it shows the address of the UPS Store as 5130  
20 South Apache Road, Suite 215.  Would you agree with me that  
21 both applications use that same starting number for the  
22 suites, 215?

23           A     Yes.

24           Q     All right.  Now, would you also agree with me that  
25 it would be difficult place both Thrive and Essence and the

1 floor plans that they submitted in that location?

2 THE COURT: In the UPS Store?

3 MR. PARKER: Exactly.

4 THE COURT: Okay.

5 BY MR. PARKER:

6 Q I don't think UPS Store would allow it. But even if  
7 they would, seeing what we've seen from the street view,  
8 wouldn't it be difficult to place those two locations in that  
9 UPS Store?

10 A It would be difficult.

11 Q Impossible even?

12 A Yeah. It would be impossible.

13 Q Now, tell me, especially given what Mr. Jolley said  
14 -- Mr. Jolley said that, we have this floor plan that we've  
15 used that we may tweak from place to place but it works.  
16 Would you agree with me that floor plan, no matter how much  
17 tweaking he does, won't fit in in this location?

18 A I don't know the size of the locations or the size  
19 of the floor plan that Mr. Jolley submitted. I would -- I  
20 don't know if I can answer that yes or.

21 Q How about Essence or Thrive, since they listed --  
22 both of them listed this location?

23 A Together?

24 Q Yeah. I showed you the applications. They both  
25 listed this location.

1           A     Can you repeat the question, please.

2           Q     Yes.  Is there a way of placing both of their floor  
3 plans in this location?

4           A     I would probably guess -- say no.

5           Q     All right.  Now, if you were tasked or charged with  
6 the responsibility to determine whether or not a location is  
7 of adequate size and especially, the one I like the most, the  
8 building is of adequate size, would you not agree with me that  
9 there is no way on God's green earth that this building would  
10 be of adequate size for either Thrive or Essence or both of  
11 them combined?

12                THE COURT:  And you're referring to the UPS Store?

13                MR. PARKER:  I am.

14                THE COURT:  Okay.

15 BY MR. PARKER:

16           Q     Isn't that true, sir?

17           A     Can you repeat that question.

18           Q     Isn't it -- well, I won't use God's green earth this  
19 time.  I saw the Judge cringe a little when I did it.

20                Wouldn't you agree, sir, that the verbiage "adequate  
21 size" is a part of the criteria in the application evaluation  
22 process?

23           A     Yes.

24           Q     Wouldn't you agree with me that there's no way that  
25 an evaluator utilizing this information would be able to say

1 and grade Thrive or Essence and indicate that they meet this  
2 criteria when their locations and their floor plans couldn't  
3 fit in this UPS Store?

4 A Well, I would have to talk to the evaluators, of  
5 course, but the location wasn't scored or ranked.

6 Q Yes. But if the -- I'm sorry.

7 A So the UPS Store wasn't taken into consideration  
8 with the size of the floor plan.

9 Q You would agree with me that this building is not an  
10 adequate size to accommodate their floor plans?

11 MS. SHELL: Asked and answered, Your Honor.

12 THE COURT: Overruled.

13 BY MR. PARKER:

14 Q Isn't that true?

15 A Can you repeat it.

16 Q Yes. Wouldn't you agree that this building is not  
17 of adequate size to accommodate the Thrive or Essence floor  
18 plans?

19 MR. HYMANSON: Objection. Speculation.

20 THE COURT: Overruled.

21 MR. HYMANSON: Thank you, Your Honor.

22 THE COURT: You made the record, Mr. Hymanson.

23 BY MR. PARKER:

24 Q Isn't that true, sir?

25 A I mean, I'd have to look at the applications and see



1 their floor plan, their proposed.

2 Q If the floor plans were in excess of the size of the  
3 UPS Stores, would you then agree with me, sir, that the  
4 buildings would not have been of adequate size?

5 A If they decided to use the UPS Store as their  
6 location.

7 MR. PARKER: Your Honor, I want to make sure that D4  
8 has been admitted into evidence.

9 THE COURT: None of the Ds are admitted. They're  
10 used. They're demonstrative.

11 MR. PARKER: Okay. I'm sorry. Have we actually --  
12 we do have D4, do we not?

13 THE COURT: There were some Ds that there was a  
14 stipulation to admit, but they have to get a different number,  
15 because Ds are demonstrative.

16 MR. PARKER: I got you.

17 THE COURT: But since there's no jury, it doesn't  
18 really matter.

19 MR. PARKER: I agree. But --

20 THE COURT: There's no jury room for them not to go  
21 back to.

22 MR. PARKER: Yeah. I thought there was some  
23 stipulation, and that's what Mr. Cristalli thought, as well.

24 THE COURT: There was. There was.

25 MR. PARKER: Can we --

1 THE COURT: But I've got to have a real exhibit  
2 number. Ds are demonstrative.

3 MR. PARKER: Can I get a real one for this one?

4 THE COURT: So, Dulce, for those Ds that the parties  
5 stipulated to admit we need to actually make a separate copy.  
6 So we a D and another copy. And you can use the D numbers,  
7 but I've just got to -- demonstrative and then admitted.

8 Are you guys done kibitzing?

9 MR. SHEVORSKI: Yeah. We're just trying to make  
10 sure it includes every on there.

11 MR. KOCH: As long as it includes everybody.

12 MR. PARKER: It does.

13 MR. KOCH: Okay. Just put the whole thing up.

14 MR. PARKER: Let's see if we can get a Bate number  
15 range for this exhibit, Your Honor.

16 THE COURT: Do you want it to be a real exhibit, or  
17 a demonstrative exhibit?

18 MR. PARKER: A real exhibit.

19 THE COURT: So we're up to 303 for Mr. Parker?

20 Teddy, you are on a roll. You've got three exhibits  
21 in in one day.

22 MR. PARKER: You know, I am, Your Honor. I just  
23 want to make sure I get the full Bate range, because what Mr.  
24 Cristalli gave me goes to 1839, and the one I was given by the  
25 State goes through 1855.

1 MR. KOCH: Mr. Cristalli gave you both of those,  
2 actually, because [inaudible].

3 (Pause in the proceedings)

4 MR. CRISTALLI: That's what happens -- that's what  
5 happens when I organize anything.

6 (Pause in the proceedings)

7 MR. PARKER: Your Honor, we ask that the next  
8 exhibit in order, I don't know what the number is, the real  
9 exhibit number, it would be DOT041835 through DOT041856.

10 THE COURT: Any objection? This is 303. Any  
11 objection?

12 MR. KOCH: I just want to see the rest of it if he's  
13 adding another section to it.

14 (Pause in the proceedings)

15 MR. PARKER: May I approach, Your Honor?

16 THE COURT: You may.

17 THE CLERK: And then this is stipulated to.

18 MR. PARKER: Yes.

19 THE CLERK: Is it admitted, Your Honor?

20 THE COURT: Yes. They all stipulated, so we can  
21 admit.

22 (Plaintiffs' Exhibit 303 admitted)

23 BY MR. PARKER:

24 Q So, Mr., Gilbert, I want to talk to you about the  
25 scoring relative to liquidity. Are you familiar at all with

1 that part of the application?

2 A Liquidity?

3 Q Yes.

4 A Yes.

5 Q Were you involved at all in training on the  
6 liquidity portion of the identified part of the application?

7 A No. That would have been Damon Hernandez.

8 MR. PARKER: Okay. So before we get there let me  
9 look again at DOT27, which we were just looking at a second  
10 ago in terms of roles and responsibilities, Shane.

11 UNIDENTIFIED SPEAKER: I'm sorry. Which exhibit was  
12 that?

13 THE COURT: Dulce thinks it's 205.

14 MR. PARKER: Yeah, I think it's 205, actually. It  
15 is 205, page 27.

16 BY MR. PARKER:

17 Q So this is Karalin Cronkhite's role; is that  
18 correct?

19 A Yes.

20 Q All right. So the items listed here in fact she  
21 performed?

22 A That would have been with the mock applications. So  
23 she travelled from Las Vegas to Carson City, assisted with  
24 training, sat with the evaluators while they evaluated the  
25 mock applications.

1 Q How about in terms of checked scores? Were those  
2 only mock scores, or were those the scores -- the final  
3 scores?

4 A Only the mock scores.

5 Q All right. Go to 28 in terms of Damon Hernandez.  
6 Would the same be true, that he only did these in terms of the  
7 mock applications?

8 A Yes.

9 Q Okay. 29, David Witkowski. Again this is only the  
10 mock application?

11 A Yeah, a mock application on the non-identified.

12 Q Did you have or determine what the reasonable length  
13 of time it would take to review an application?

14 A No, we didn't until we got started. Now we were  
15 able to project out a finish date.

16 Q And what was the determined reasonable time to  
17 complete a review of an application form?

18 A I don't recall what that was.

19 Q Okay. Well, we'll get there. Let me have you take  
20 a look at DOT128.

21 MR. PARKER: 128, Shane, same exhibit, 205.

22 BY MR. PARKER:

23 Q It says, "Revenue from application fees." You see  
24 that?

25 A Yes.

1           Q     Now, this first paragraph after the main paragraph  
2 says, "Must be used to pay back the Division for actual costs  
3 incurred by the Division in processing application, including,  
4 without limitation, conducting background checks." What  
5 background checks were speaking of?

6           A     I think that's -- I think that's language right out  
7 of the statute or the regulation.

8           Q     Okay. And what background checks would that be  
9 referring to?

10          A     That would be to --

11          Q     Because the only checks -- let me make sure we're  
12 clear. The only checks that you've discussed with us today  
13 that may have been done was checking applications against the  
14 historical information that an applicant may have provided  
15 previously, including any transfers of ownership.

16                 This document seems to suggest that something more  
17 than that was contemplated. Am I wrong or correct?

18          A     That's just language out of the application. I  
19 would need to see the rest -- the previous pages of what this  
20 model was.

21          Q     The previous page is page 127, which says "Marijuana  
22 Initial Application Fees."

23          A     Yeah. I think, if I recall correctly, this is just  
24 going over the history of the program, how the program works,  
25 the revenue, statutory language.

1 Q Okay. This page 127 still reflects the medical  
2 marijuana statute; is that correct?

3 A It does. Yep.

4 Q Wasn't it your responsibility to adapt or change or  
5 revise this training information to reflect 453D?

6 A It was actually Ky Plaskon adapted it.

7 Q Okay. So obviously he didn't change this one from  
8 453A to 453D; is that correct?

9 A He must have missed it.

10 Q Okay. Fair enough. In terms of conduct background  
11 checks, when you did the medical marijuana application process  
12 you'd have only had the application information provided with  
13 that application. There would be no data previously; is that  
14 correct?

15 A That's correct.

16 Q All right. And so then in conducting a background  
17 check, if you had no prior information, would that have  
18 included now using outside sources to figure out if the  
19 application was complete and honest?

20 A I'm sorry. I don't understand the question.

21 Q Yeah. So in 2014 you would have had this data  
22 compiled relating to each of the licensee applicants, because  
23 that would have been the first application; is that correct?

24 A Yes, that's correct.

25 Q So when you did background checks in 2014 did it

1 include actually going to other sources, the Secretary of  
2 State, online, Google searches, anything looking at SEC  
3 filings, was that included in the 2014 background checks?

4 A No, it was not. That refers to state and FBI  
5 background checks.

6 Q Okay. Were state and FBI background checks utilized  
7 for purposes of 2018 application process?

8 A Yes, they were.

9 Q All right. And were those for all owners, or just  
10 owners listed?

11 A Well, all owners that were listed in the application  
12 compared to what was on record at the Department.

13 Q So if there were owners that committed felonies that  
14 were not listed who were in fact owners, you would never be  
15 able to determine that based upon your own data; is that  
16 correct?

17 A We rely on the data that's provided in the  
18 application.

19 Q So that's a correct statement?

20 A Yeah. People can provide falsified information to  
21 the Department. We hope they don't.

22 Q Right. So if they're a 30 percent owner and GGB or  
23 Xanthic was a felony-convicted drug dealer, you would never  
24 know, because they weren't listed and you didn't use any  
25 outside sources to determine that; isn't that correct?



1           A     We didn't use the Department of Public Safety to run  
2 a background check.

3           Q     Right. And that was the purpose for the background  
4 check, to figure out if there were any unsavory characters,  
5 those who may have committed felonies from being in this  
6 marijuana business in Nevada; isn't that correct?

7           A     Yeah. There's excluded felonies listed that we look  
8 for.

9           Q     Right. But that wasn't accomplished in this 2018  
10 application process because you never -- that was not  
11 accomplished in 2018 because if they didn't list an owner who  
12 perhaps had a felony conviction, you didn't do anything to  
13 determine if there were any owners out there from a background  
14 check; is that correct?

15          A     We compared the application to the record that we  
16 have in the house. All owners, officers, and board members  
17 that we had listed we either verified for background checks or  
18 -- and then we didn't require shareholder information, so  
19 those were not checked.

20          Q     All right. So shareholders of all of these  
21 companies, because you didn't check, could have been felony-  
22 convicted individuals; isn't that correct?

23          A     Hypothetically, yes.

24          Q     And you would never know, because you never checked  
25 anything other than the information the applicant actually

1 gave you; is that correct?

2 A I'm sorry. Can you repeat that.

3 Q Yeah. And you would never know, the State would  
4 never know, because you never checked beyond the information  
5 given by applicant himself, him or herself.

6 A We relied on the information provided in the  
7 application.

8 Q Right. So if an applicant wanted to hide an owner  
9 who would disqualify them potentially, they just didn't have  
10 to list them.

11 A Well, they were supposed to list officers of the  
12 corporations, the owners, and also the board members. And we  
13 rely on the information that's provided in the application,  
14 and that's about the best the Department can do at that point.

15 Q That's right. But you just said the owners. You  
16 didn't say some owners, but the owners; right?

17 A Yeah. Excluding --

18 Q All right.

19 A -- shareholders, because we don't -- we didn't  
20 require that.

21 Q So look at DOT156. Again, it's still a part of  
22 Exhibit 205. Did this medical marijuana program  
23 organizational chart also miss Mr. Plaskon's review?

24 A I'm sorry. Can you repeat that.

25 Q Yes. This was used in 2018, but it says "Medical

1 Marijuana Program." Do you know why that was included in the  
2 training?

3 A I don't. I don't.

4 Q You'd agree with me it should not have been  
5 included?

6 A We run both programs, so technically it's correct.

7 Q But this was not for a medical license, medical  
8 marijuana license.

9 A It was not. No.

10 MR. PARKER: Okay. So go to page 158, please,  
11 Shane.

12 BY MR. PARKER:

13 Q Again this goes to the training. Do you recall this  
14 training slide?

15 A Yeah, I do.

16 Q And the second bullet point says, "Score dispensary  
17 applications individually." See that?

18 A Yes.

19 Q All right. Who was in charge of handing out the  
20 applications to the evaluators?

21 A I think those -- pretty sure those came through the  
22 administrative assistants. The Manpower administrative  
23 assistants would ask Marilyn Gray when they needed another  
24 one, and then she would provide that for them on a thumb  
25 drive.

1 Q All right. And then it says, "Scoring dispensary  
2 licenses as a group." Is that when the evaluators get  
3 together at the end and speak to each other regarding their  
4 individual scores?

5 A Yes, that's correct.

6 Q All right. And would there be any DOT involvement  
7 in either level of this process, scoring applications  
8 individually, or scoring dispensary licenses as a group?

9 A No, there would not.

10 Q Is there a difference between applications and  
11 license in these two bullet points?

12 A I don't think so. I think it just might be the  
13 wrong word.

14 Q Okay. You would treat -- you believe applications  
15 and licenses would be interchangeably -- used interchangeably?

16 A Yeah. Well, no, I don't. But --

17 Q So somebody made a mistake?

18 A Well, I think scoring dispensary applications as a  
19 group.

20 Q All right. Now, Mr. Jolley said that his  
21 application was over a thousand pages long. Do you recall him  
22 testifying to that?

23 A I didn't recall him saying that, but I believe you  
24 you did.

25 Q Is that uncommon for the applications to be in

1 excess of a thousand pages?

2 A I don't think so. I think there was quite a few  
3 that are large.

4 Q All right. And how long do you think it would take  
5 an evaluator to review a application of a thousand pages or  
6 more?

7 A You know, I don't know. I'd have to look. I'd have  
8 to go back and look. I have no idea.

9 Q Well, take a look at page DOT227, which I believe to  
10 be --

11 MR. PARKER: I believe to be Exhibit 206, Your  
12 Honor. I think this has been stipulated to, as well.

13 THE COURT: Any objection?

14 THE CLERK: It's in.

15 THE COURT: 206 is already in. Okay.

16 MR. PARKER: All right. So go to page 227 of  
17 Exhibit 206, Shane.

18 BY MR. PARKER:

19 Q It says, "Mock applications. Try to get through two  
20 or three applications a day." You see that?

21 A I do.

22 Q Now, were the mock applications a thousand pages?

23 A Some were.

24 Q All right. So going through two or three  
25 applications in a day was a goal set for the evaluators?

1           A     You know, I don't know. This is -- this was Ky's,  
2 Mr. Plaskon's slide. He might have just put that as, you  
3 know, something to start the training off and then  
4 realistically it might have changed.

5           Q     Okay. Do you know whether or not it changed?

6           A     I don't.

7           MR. PARKER: Now, can you go to 262 for me, Shane.  
8           This is Exhibit 207, Your Honor. I believe this  
9 exhibit has also been already admitted.

10          THE COURT: Dulce says yes.

11          MR. PARKER: All right. Thanks, Dulce.

12          And I want you to go to page 262. So Exhibit 207,  
13 page 262, Shane.

14 BY MR. PARKER:

15          Q     Now, these the responsibilities of the  
16 administrative team. Do you see that?

17          A     Yes, I do.

18          Q     All right. You spoke to the Judge about this in  
19 terms of the administrative team's obligations. When we talk  
20 of administrative team here are we talking about the two  
21 administrators that came from Manpower?

22          A     Yes, the administrative assistants.

23          Q     Now, it say here that they're supposed to perform  
24 verification duties for background and resume checks. Again,  
25 is it your testimony that that background and resume check

1 only meant reviewing the information provided by the  
2 applicant?

3 A The background check portion of that would be to  
4 help identify if all owners, officers, and board members had  
5 current, up-to-date background checks through the State and  
6 the FBI.

7 Q That's it. But it does not include a confirmation  
8 that all the owners, officers, or board members actually were  
9 listed.

10 A No. Not with the administrative assistants.

11 Q And would the resume checks involve determining  
12 whether or not -- let's say someone listed a person as having  
13 a college degree. Would that resume check involve calling a  
14 school or a university to determine if they in fact had a  
15 degree?

16 A I believe so. I don't know if they did make any  
17 calls. That would be a question that you'd have to ask some  
18 of the evaluators.

19 Q You agree with me that some -- that scoring -- one  
20 of the scoring criteria included education levels?

21 A Yes.

22 Q All right. And so if someone put on their  
23 application that every owner had a Ph.D in economics, you  
24 would simply rely on that representation without any resume  
25 check?

1           A     No. They did resume checks.

2           Q     And how did they do resume checks?

3           A     Through Google searches.

4           Q     Is there any information in a written form that I  
5 could see -- because I've not -- from my review of the records  
6 in this case I've not seen any Google search results regarding  
7 any applicant. So this is the first I'm hearing of this. To  
8 your knowledge, did you train any of these evaluators on how  
9 to do a resume check?

10          A     I did not.

11          Q     All right. So do you know of anyone who did?

12          A     I don't. It could have been the identified section,  
13 so Damon Hernandez? I'm not sure.

14          Q     You don't know, do you?

15          A     I don't.

16          Q     You don't know if a single resume was checked in  
17 terms of someone's education achievements on any applicant.

18          A     That's something you'd have to talk to the  
19 evaluators about. I wasn't intimately involved in the  
20 evaluation of the applications.

21          Q     Did any evaluator come to you and say, listen, we're  
22 having a difficult time confirming this person's education  
23 level?

24          A     Not that I can recall.

25          Q     Do you recall ever offering someone assistance in



1 providing information from a university to determine if  
2 someone actually was a graduate of college?

3 A I did not.

4 Q Do you know -- have you seen any documentation  
5 indicating that someone actually did a search to check  
6 someone's resume?

7 A No, have not.

8 Q The bullet point --

9 MR. PARKER: Put that back on the screen for me,  
10 Shane.

11 BY MR. PARKER:

12 Q The bullet point says, "Will not perform merit-based  
13 scoring." So the administrative team was not given the right  
14 to do scoring, simply to provide information to the  
15 evaluators; is that correct? Is that what this is saying?

16 A Well, it's saying that they would help verify and  
17 individual, whether they had a background check or not that  
18 was current with the Department, but they weren't involved in  
19 evaluating the application.

20 Q Okay. How would we know whether or not any  
21 background or resume checks were done by the administrative  
22 team?

23 A Well, the background checks DPS -- they're not --  
24 they're verifying the criminal background checks.

25 Q Yes. I'm talking about the resume checks.

1           A     You would have to talk to them.

2           Q     No, no.  Would there be any paper trail documenting  
3 that resume checks were performed?

4           A     Possibly in the notes.  Violations.

5           Q     Okay.  But we don't see it in the notes.

6           A     No.  That would be it.  That's the paper trail.

7           Q     All right.  So, for example, there's no -- there's  
8 no information from any schools or universities saying, yes, I  
9 verified that this person went to Dartmouth College, graduated  
10 in 1984?

11          A     That would be question for the evaluators.

12               MR. PARKER:  Can we go to DOT281, please.

13               And that would still be in Exhibit 207, Your Honor.

14               THE COURT:  Thank you.

15 BY MR. PARKER:

16          Q     So it says, "Multi-establishment applicants."  I'm  
17 concerned with the second bullet point.  It says, "Cross-check  
18 to make sure that owners, officers, and board members meet  
19 requirements within the law for ownership percentage and  
20 jurisdiction limits."

21               Now, when I saw this percentage, it made me think  
22 back to the Administrative Code that says 5 percent.  Do you  
23 see that?

24          A     Yes.

25          Q     All right.  Was that done in fact?

1           A     So what we do is at the Department we have an agent  
2 card process, and we -- based on the ownership percentage  
3 they're required to get background checked periodically,  
4 whether three years, five years, or annually.

5           Q     Yes.

6           A     So that's -- I'm assuming that's where this is from,  
7 just verifying that the background checks are current.

8           Q     But it says "percentage."

9           A     Yeah. Which ties into -- I'm sorry, sir.

10          Q     No. Go ahead. Which ties into?

11          A     Which ties into whether they need an agent card or  
12 background check and how often they need a background check.

13          Q     And what percentage of ownership would you have to  
14 do to require you to have an agent card?

15          A     5 percent.

16          Q     Now, if that is the case, if the percentage is  
17 important in terms of getting agent cards, how could you not  
18 require shareholders with 5 percent or greater to be  
19 identified on the application? Because they need an agent  
20 card, and it did not identify if they can't get an agent card;  
21 isn't that correct?

22          A     They would -- they need to identify themselves to  
23 get an agent card.

24          Q     Exactly. And so if you didn't require them to do  
25 it, there's no way in the world you can comply with this

1 portion of the training; isn't that correct?

2 A Well, this part of the training was to confirm that  
3 the ownership that we had on record at the Department, because  
4 that's what we required, met the requirements for an up-to-  
5 date background check of criminal history.

6 Q No. But you included specifically for -- within the  
7 law for ownership percentage, which again refers you back to  
8 the Administrative Code which we went over earlier today. And  
9 if that's the case, every applicant had to include a 5 percent  
10 owner or greater so that you be able to then determine their  
11 requirements for agent cards; isn't that correct?

12 A Well, we didn't require shareholders to be submitted  
13 in the application.

14 Q I didn't use the word "shareholders." I said  
15 5 percent owner or greater.

16 A Well, that would match the record at the -- what we  
17 had on record at the Department.

18 Q If they disclosed.

19 A Yeah, if --

20 Q But if they did not disclose a 5 percent owner or  
21 greater, then that person would not have been able -- the  
22 evaluator, that is, would not be able to determine who would  
23 be required to get an agent card for that establishment; isn't  
24 that correct?

25 A Well, through our renewal process annually -- so we

1 know -- we know who the owners, officers, and board members  
2 are, and that's part of the renewal process, is to verify that  
3 they've been --

4 Q No. You know the ones they disclosed. You don't  
5 know the ones that really are out there. You only know the  
6 ones that that they disclosed; isn't that correct?

7 A Yes.

8 Q Because you're taking them at their word, aren't  
9 you?

10 A Yes, we are.

11 Q And if they don't disclose every owner with  
12 5 percent or great interest, then those owners would not have  
13 been required to get agent cards, which would be against the  
14 law; isn't that true, sir?

15 A I don't know. I'm not a legal expert.

16 Q Well, you put it your own training. "Requirements  
17 within the law." That's within your training; isn't that  
18 correct? This came straight from your training guidelines.

19 A This would refer to the 5 percent background checks  
20 that we require or the 3 percent on the annual basis. That's  
21 what that training was addressing.

22 Q Sir, you indicated that this training and this  
23 percentage came -- this ownership percentage came from the  
24 Administrative Code. That's what you said a few moments ago.

25 A Yes. I think it's the statute.

1           Q     All right.  And, again, it requires those with that  
2 interest, that 5 percent ownership interest, to have an agent  
3 card; isn't that correct?

4           A     That's correct.

5           Q     Which means that every applicant should identify  
6 every owner with a 5 percent interest or greater; isn't that  
7 correct?

8           A     Yes.

9           Q     And if they didn't disclose it, that would mean that  
10 they did not comply with the law as you indicated in this  
11 training; isn't that correct?

12          A     The entity?

13          Q     Yes.

14          A     Yes.

15          Q     Thank you.  All right.  So for a company like Nevada  
16 Organics -- and you heard Mr. Jolley speak -- he did not  
17 identify all of his ownership -- all of the owners with  
18 5 percent or greater ownership in Nevada Organics.  Did you  
19 realize that?

20               MR. KOCH:  Objection.  Misstates evidence,  
21 testimony.

22               THE COURT:  Overruled.

23 BY MR. PARKER:

24          Q     Did you hear him say that today?

25          A     I did.  But I -- I'd have to look at the application

1 and have it evaluated.

2 Q That's okay. We don't need the application for this  
3 conversation. We heard -- you heard what he testified to.  
4 And wouldn't you agree with me, given that there were owners  
5 of Nevada Organics that were not identified that have a  
6 greater than 5 percent interest, because we know they sold  
7 95 percent of that company prior to the application process  
8 being completed, wouldn't you agree with me that application  
9 and given the testimony you heard was in violation of this  
10 training slide?

11 MR. KOCH: Objection. Misstates testimony. He's  
12 referring to what Mr. Kemp testified to.

13 THE COURT: Overruled. Mr. Kemp didn't testify.  
14 BY MR. PARKER:

15 Q Isn't that true, sir?

16 A I don't know if I have enough information to answer  
17 that question, because I -- I mean, I don't know if that's the  
18 case. I'd have to really look at it.

19 Q Well, if he was being honest -- if he was being --  
20 I'm sorry. Didn't mean to interrupt you. Go ahead.

21 A I don't know if I can answer that right --

22 THE COURT: Only one of you can speak at a time.  
23 Mr. Parker, you know that.

24 MR. PARKER: I do.

25 //

1 BY MR. PARKER:

2 Q Go right ahead.

3 A I don't know if I could accurately answer that  
4 question up here on the stand. I'd have to look at the  
5 information and have, you know, other staff look at it, also.

6 Q Well, no. Let's just take what you heard yourself  
7 with your own ears. You heard Mr. Jolley say that there are  
8 owners in excess of 30 percent that were not disclosed on his  
9 application. Didn't you hear him say that?

10 MR. KOCH: Objection. Misstates testimony.

11 THE COURT: So this is a requested break, Mr.  
12 Parker. We're going to take a break. Everybody needs to do a  
13 biological break at this point, so we will see you guys in  
14 10 minutes.

15 (Court recessed at 3:37 p.m., until 3:47 p.m.)

16 THE COURT: Are we ready?

17 MR. PARKER: Ready to go.

18 THE COURT: Sir, are you ready?

19 THE WITNESS: Yes, Your Honor.

20 THE COURT: We've got another hour.

21 MR. PARKER: We're missing Mr. Kemp.

22 (Pause in the proceedings)

23 THE COURT: Mr. Gilbert, you are ready to start up  
24 again.

25 Mr. Parker, let's be brief. We've got an hour.



1 MR. PARKER: Yes indeed.

2 BY MR. PARKER:

3 Q All right. So we were talking for a moment there  
4 about the length of time necessary to review an application.  
5 Do you recall that?

6 A Yes.

7 Q Okay. And then we looked at the slide that talked  
8 about mock applications, two to three days. Remember that?

9 A Yes.

10 Q Was that number refined to a number of hours or a  
11 more precise length of time it would take to review an  
12 application?

13 A Not that I can recall. Not during the mock  
14 application period.

15 Q All right. How about in terms of the real  
16 applications?

17 A I think -- oh, I don't -- I don't -- I don't know if  
18 it was or not. I was never given an average number.

19 MR. PARKER: All right. Look at DOT298, which,  
20 again, is a Exhibit 207, I believe, Your Honor. It is.

21 THE COURT: Okay.

22 BY MR. PARKER:

23 Q "Each application is estimated to take 33 hours to  
24 review." Is that a fair estimate of how long it would take to  
25 review each application?

1           A     You know, I don't really know if that was actually  
2 what took place. I'd have to look at all the applications and  
3 the time that was put down for them. That would -- I think  
4 from the previous -- 2014 that was an estimate, you know,  
5 based on the three evaluators.

6           Q     Okay. Well, you had six evaluators; right?

7           A     Yeah. But three per session.

8           Q     All right. And would the 33 hours include each of  
9 the three evaluators' time, so maybe 11 hours for each?

10          A     Yeah. Again, I don't know if -- I don't know how  
11 accurate that number is. For the PowerPoint slide that was in  
12 that was probably taken from 2014.

13          Q     Right. Do you know if that had any applicability to  
14 the 2018 applications?

15          A     What --

16          Q     In terms of the length of time it would take to  
17 review an application. Were the applications in 2018 longer  
18 than 2014 on average?

19          A     You know, I don't know. I don't know what they  
20 were.

21          Q     All right. Good enough.

22                 MR. PARKER: Let's look at page 300.

23 BY MR. PARKER:

24          Q     Now, was this taken from the medical, or is this  
25 particular to the 2018 recreational applications?

1 A That's from the medical.

2 Q Was it applied to the recreational applications?

3 A It was not.

4 Q It was not?

5 A No. It's not part of the criteria.

6 Q So there were no regulatory first four criteria for

7 the --

8 A No. That was -- I'm sorry, sir.

9 Q No. Go ahead.

10 A That was probably a slide just left over that should

11 have been taken out.

12 Q All right. Do you blame --

13 A It was probably addressed in training.

14 Q Do you blame Mr. Plaskon for all of the 2014 slides

15 that found its way into the 2018 training?

16 A Do I blame Mr. Plaskon?

17 Q Or attribute it to Mr. Plaskon?

18 A No. It was a group effort.

19 MR. PARKER: Okay. Turn to 314 for me, Shane.

20 Still in 207.

21 BY MR. PARKER:

22 Q Now, this says "Verification Activities." It says,

23 "Verify background check results and confirmation of resume

24 details." Would your answers be the same, that the

25 administrative team did not review anything beyond what was in

1 the DOT data files?

2 A I'm sorry. Can you clarify?

3 Q Yes. The only information the administrative team  
4 used was the information provided by the applicants and what  
5 the DOT had its own files; is that correct?

6 A As far as background checks, yes.

7 Q Okay. And the same with resumes; right?

8 A Yeah. I mean, you'd have to talk to the evaluators  
9 if they reached out to the administrative team to do any  
10 resume work.

11 Q I want you to take a look at 315. This goes a  
12 little further. And I believe this is meant to comply with  
13 the statute, as opposed to the regulation. It says,  
14 "Verification of background checks on all proposed owners,  
15 officers, and board members." Do you see that?

16 A I do.

17 Q Do you know what that entailed?

18 A Yeah. I kind of spoke to that earlier about  
19 verifying that in our portal we track all background checks  
20 for criminal history. That would be verifying that all  
21 owners, officers, and board members listed on the application  
22 were up to date on their background checks.

23 Q So when the DOT received information through the --  
24 I think it was the Avino paper of the proposed purchase, do  
25 you recall that in the extraction report?

1 THE COURT: Text messages? The text messages?

2 MR. PARKER: Yeah. From the extraction report.

3 BY MR. PARKER:

4 Q Do you remember that? Mr. Plaskon discussed it.

5 A I do.

6 Q Were verifications on backgrounds of those proposed  
7 owners performed by the administrative team?

8 A No, they were not.

9 Q Okay.

10 A Those wouldn't be -- those wouldn't be checked until  
11 we actually got the transfer of interest submitted.

12 Q All right. So, despite the fact that that was done  
13 prior to the application being submitted, the proposed owners'  
14 backgrounds would not have been verified; is that correct?

15 A I'm sorry. I don't understand that question.

16 Q Yeah. We know that based upon the text message  
17 which was a part of the extraction report the purchase took  
18 place before September 20th, 2018. Recall that?

19 A I do. I don't recall which companies it was,  
20 though.

21 Q All right. But this verification slide indicates  
22 that proposed owners' backgrounds would be verified; is that  
23 correct?

24 A So that goes back to what I mentioned earlier. If  
25 there's a transfer of interest that the Department had not

1 acted upon --

2 Q Yes.

3 A -- that transfer of interest would have to be  
4 approved before that conditional license.

5 Q Now, it says "proposed owners." So this doesn't  
6 seem to say at the conclusion of a transfer of ownership or a  
7 transfer of interest. It just says "proposed owners," doesn't  
8 it?

9 A Yes, it does.

10 Q All right. And that's how you trained them; is that  
11 correct? Trained the evaluators. Or the, I'm sorry,  
12 administrative team.

13 A Well, the administrative assistants would bring it  
14 to Diane O'Connor, who manages the agent card portal which  
15 houses all the background check information.

16 Q So this would have been meant to be performed by a  
17 DOT employee?

18 A The verification of the backgrounds, yes.

19 Q All right. Do we know -- well, I believe you've  
20 answered, but I just want to make sure. So a DOT employee,  
21 Ms. Diane O'Connor, did she check the backgrounds of proposed  
22 owners of -- what's the name of the company -- I think it was  
23 Essence. I'm sorry. Of Essence that was brought out in the  
24 extraction report text message?

25 A If there was -- I don't know. I don't know if we

1 had the transfer of interest in the house then.

2 Q But this doesn't say that it's predicated on the  
3 transfer of interest being considered or approved. It just  
4 says on all proposed owners; isn't that correct?

5 A Well, yeah. I mean, that would be proposed -- that  
6 would be proposed in today's -- 2018 the proposed owners would  
7 be somebody that's proposing a transfer of interest to the new  
8 owner.

9 Q That's not what this say.

10 A Well, that's -- that's probably language from the  
11 2014 where everybody was proposed.

12 Q So is this training incorrect?

13 A No, it's not. Because we verify all proposed  
14 owners, also, if there was a transfer of interest and they  
15 were awarded.

16 Q No. But based upon the purchase being done prior to  
17 submission of application shouldn't the proposed owner  
18 verification have been done once the DOT received notice of  
19 that?

20 A I don't -- I don't think we had the transfer of  
21 interest at the Department.

22 Q Okay. But the training doesn't say that the  
23 transfer of interest was necessary, does it?

24 A No, it doesn't.

25 MR. PARKER: All right. Let's go to page 340.

1 Which again is still 207, Your Honor.

2 THE COURT: Thank you.

3 BY MR. PARKER:

4 Q It says, "Questions during individual review." Now,  
5 I asked you about this earlier. What do you consider to be an  
6 individual review?

7 A That would be if they -- if they couldn't come to a  
8 conclusion or they had any discrepancies that they couldn't  
9 come to a -- to a, you know, consensus, if they're more than  
10 3 points apart. That wouldn't be elevated up to me.

11 Q Now, you've told me today that there were certain  
12 areas of the application that you did not train the evaluators  
13 on, you left it up to Ms. Cronkhite or Mr. Hernandez or Mr.  
14 Plaskon. Do you recall that?

15 A Yes.

16 Q All right. So why would you be the stopping point  
17 for evaluation questions if you had, you know, such a limited  
18 role in the process?

19 A Because I'm management, and if something needs to be  
20 elevated up to Mr. Pupo or even higher, then I would be the  
21 avenue to take.

22 Q Do you recall fielding any questions from the  
23 evaluators or the administrative team that you provided  
24 responses to?

25 A Not specifically by the application, but they did



1 ask maybe some process questions.

2 Q Okay. And what did you do with those questions?

3 A I would answer them if I could.

4 Q Would you do it in writing?

5 A Most -- we did have some policies and procedures,  
6 but if it was a question I could answer, you know, verbally, I  
7 would.

8 Q Okay. But this item says here, the second-to-the-  
9 last bullet point says you're supposed to document the issue.  
10 Did you document every issue?

11 A I don't know if we had any issues.

12 Q Okay. You just said there were questions and you'd  
13 answer them verbally. Did you document those answers that you  
14 gave?

15 A Potentially. I'd have to go back and look and see  
16 what we came up with through the procedures.

17 Q And if you did so, should they be in the DOT files?

18 A I don't know how to answer that question.

19 Q All right. Would that be -- would you have your own  
20 separate files if you documented the issues?

21 A No.

22 Q Is there some type of central location for issues  
23 that are documented?

24 A There's a -- we save all of our documents on a  
25 shared drive.

1           Q     Okay. Did you -- do you know if that shared drive  
2 was provided to the State?

3           A     All documents, from my understanding, that were  
4 requested have been provided.

5           Q     All right. Good. Let me have you look at DOT391,  
6 which is Exhibit 209.

7                     MR. PARKER: I think that's been stipulated to, as  
8 well, Your Honor.

9                     THE CLERK: Yes.

10          BY MR. PARKER:

11           Q     You're familiar with this, the application criteria  
12 points breakdown?

13           A     Yes.

14           Q     Did you have anything to do with determining the  
15 points for the building construction?

16           A     Yeah. So Jorge Pupo, Kara Cronkhite, and myself met  
17 and we compared -- we compared the current application to the  
18 regulations and discussed the 250 points.

19           Q     All right. So building construction. This is worth  
20 20 points; is that correct?

21           A     Yes.

22           Q     Number 1 says, "Building plan details." Do you see  
23 that?

24           A     I do.

25           Q     Do you understand what a building plan or building

1 plan details are?

2 A Is this -- can I ask a question?

3 Q Certainly.

4 A Is this the -- I don't know what document this is.

5 MR. PARKER: Let him see the whole document, first

6 page.

7 BY MR. PARKER:

8 Q This is the scoring criteria. Are you familiar with

9 this?

10 A Looks in a different format than what I'm familiar

11 with.

12 Q This is one of the ones provided by the Department

13 of Taxation. Do you want to look at my hard copy?

14 A Yes, please.

15 MR. PARKER: May I approach, Your Honor?

16 THE COURT: You may.

17 THE WITNESS: Okay. I see.

18 BY MR. PARKER:

19 Q Are you familiar with this document?

20 A Yes.

21 Q Can you read it on the screen?

22 A It's not on the screen.

23 Q Well, just use mine --

24 A All right.

25 Q -- and I'll work with the one on the screen.

1           So Element Number 1 is building plan details. Do  
2 you have an understanding of what building plan details are?

3           A     That would be the floor plan, the detail of the  
4 establishment.

5           Q     Well, it doesn't say details of a floor plan. It  
6 says building plan details; is that correct?

7           A     I don't know where you're at. Sorry.

8           Q     First page at the bottom, Element Number 1 under  
9 building construction. Do you see it? First page.

10          A     Yeah. I'm trying to -- I'm not familiar with this  
11 document --

12          Q     You're not familiar with the --

13          A     -- this summary, the summary one. The scoring  
14 criteria as it is broken out like this --

15          Q     Yes.

16          A     -- that's what I'm familiar with.

17          Q     Okay. But are you familiar with Element Number 1,  
18 building plan details?

19          A     I am.

20          Q     Okay. Let's start there. Would you agree with me  
21 that that description does not include floor plan details?

22          A     Yes.

23          Q     You agree with me there's a difference between a  
24 building plan and a floor plan?

25          A     Yes, I would.

1 Q All right. And the Element Number 2 says, building  
2 plan regulatory compliance. See that?

3 A Where? Oh.

4 Q Same page. First page at the bottom.

5 Q Yes, I see it.

6 Q All right. It doesn't say floor plan regulatory  
7 compliance, does it?

8 A No, it doesn't.

9 Q Because the floor plan may be adequate, but may not  
10 be compliant with the regulations; is that correct?

11 A Can you repeat that.

12 Q Yes. A floor plan could be adequate, but not in  
13 compliance with the applicable regulations; isn't that  
14 correct?

15 A Well, they would score lower. It wouldn't be as  
16 strong in the application. The more --

17 Q Well, you would think not.

18 A The more compliant the higher they would score.

19 Q Well, in fact it had to be compliant, number one.  
20 Isn't that a threshold to be in compliance?

21 A Yeah. Yes.

22 Q Right. But you can't determine if the floor plan is  
23 compliant because the floor plan does not say that the  
24 building is in compliance.

25 Let me give you some context. A floor plan does not

1 tell you whether or not you're within 300 feet of a school.  
2 Would you agree?

3 A I'd agree with that, yes.

4 Q A floor plan does not tell you if you're within  
5 1200 feet of a church or a liquor store or a casino or my  
6 backyard; is that correct?

7 A Yes.

8 Q So simply providing a floor plan provides no  
9 information in terms of regulatory compliance; isn't that  
10 correct?

11 A It does towards the regulations surrounding a floor  
12 plan.

13 Q No. I'm talking about in terms of building  
14 compliance, sir. Because it says in the Element Number 2,  
15 building plan regulatory compliance.

16 A No, it doesn't.

17 Q And wouldn't you agree with me, sir, that when we  
18 looked at that P.O. box that was attached to the UPS Store  
19 that that wouldn't tell you whether or not that floor plan was  
20 actually in a building that was -- that would meet the  
21 regulations? Isn't that correct?

22 A I'm sorry. Can you repeat that one, sir.

23 Q Yes. You remember I showed you the location for  
24 Thrive and Essence --

25 A Yes, I do.

1           Q     -- in a UPS Store, a P.O. box associated with a UPS  
2 Store?

3           A     Yes.

4           Q     Wouldn't it be true, sir, that having that  
5 information would give you no understanding of whether or not  
6 that UPS Store or that P.O. box was in compliance with the  
7 regulations, 300 feet from a school or a church or liquor  
8 store or a casino, anything?

9           A     The floor plan wouldn't.

10          Q     That's right. So how would you judge a floor plan  
11 under these two elements? Because it's not a building plan  
12 and it provides you no information in terms of regulatory  
13 compliance.

14          A     I'm trying to see in the actual evaluation materials  
15 what that language says, because I'm not positive why this --

16          Q     No problem.

17          A     All right.

18          Q     You ready?

19          A     Yeah. Go ahead.

20          Q     All right. So what's the answer?

21          A     Can you repeat the question.

22          Q     I knew you were going to say that.

23                Yes. These are the two elements, building plan  
24 details, and building plan regulatory compliance. You see  
25 that?

1           A     I do.

2           Q     Wouldn't you agree with me, sir, that having a P.O.  
3 box associated with a UPS Store could not provide you any  
4 information for determining a building plan or building  
5 regulatory compliance? Wouldn't you agree with that, sir?

6           A     I would.

7           Q     Thank you.

8                     Now, you indicated that sometime prior to September  
9 20th, 2018, there was a change made that locations were not  
10 necessary. Remember that?

11          A     Yeah. I think I said -- yeah. I think I brought  
12 that up in my last testimony.

13          Q     Was the training tool ever changed?

14          A     Not that I'm aware of. Not that I can recall.

15          Q     So you had the evaluators using a training tool that  
16 didn't match what you were telling certain applicants; is that  
17 what you're telling me?

18                     MR. PARKER: You can put that back up, Shane.

19                     THE WITNESS: Were you referring to this as the  
20 training tool?

21 BY MR. PARKER:

22          Q     As the scoring criteria, yes.

23          A     I don't know if this was ever used as the scoring  
24 criteria. The scoring criteria would be these sheets.

25          Q     So you think that the Department of Taxation has



1 given me a document that was not actually utilized by the  
2 evaluators as a scoring criteria?

3 A No, that's not what I'm saying. This might have  
4 been used for a different purpose.

5 Q Well, you don't trust the heading of that document?

6 A I mean, that's what it is, yes.

7 Q That's what I thought. So if that's what it is and  
8 it is the scoring criteria, why would you utilize that scoring  
9 criteria if you weren't going to actually follow the elements  
10 of the scoring criteria, building plan details, building plan  
11 regulatory compliance?

12 A The evaluators were trained on the evaluation  
13 sheets, which were these, which is different than what this  
14 says here.

15 Q So --

16 MR. PARKER: Your Honor, may I approach?

17 THE COURT: You may.

18 MR. PARKER: Thank you.

19 BY MR. PARKER:

20 Q So let's actually utilize for purposes of the record  
21 the Bate numbers.

22 A Okay.

23 Q So when you're referring to it, maybe you can tell  
24 me what you believe to be the right documents for us to be  
25 looking at, okay?

1           A     Okay.

2           Q     So DOT391, that's the first page of Exhibit 207 --

3           THE COURT: 209.

4           MR. PARKER: 209. Thank you.

5           THE COURT: Dulce has your back.

6           MR. PARKER: She does. I appreciate it.

7 BY MR. PARKER:

8           Q     -- of Exhibit 209. Are you telling me this was not  
9 -- this document and this page was not used by the scorers or  
10 the evaluators?

11          A     I can't recall if it was or not.

12          Q     All right. So you don't know. So the head guy --  
13 and I say the head guy because when we looked at the chart  
14 right before we took the break and said that questions --  
15 ultimately questions come to you. So as the head person, you  
16 don't know if this was the scoring criteria for the  
17 evaluators?

18          A     The scoring criteria was in document DOT000396.

19          MR. PARKER: May I approach again, Your Honor?

20          THE COURT: You may.

21 BY MR. PARKER:

22          Q     You don't believe, sir, that 391 was utilized?

23          A     It doesn't give any detail that the evaluators would  
24 have used.

25          Q     Good enough. So let's use this one.

1           MR. PARKER:  Shane, can you pull up Exhibit 209,  
2 page 396.

3 BY MR. PARKER:

4           Q     We'll use this one, sir.

5           A     All right.

6           Q     That's the one you're familiar with; is that  
7 correct?

8           A     Yes.  It looks familiar.'

9           Q     I actually like this one equally.

10           MR. PARKER:  So you just blow that one up.  Thank  
11 you.  Is that the biggest you can get?

12                 Because the witness has my version -- do we --

13           THE COURT:  I understand.  You're welcome to walk  
14 up.

15           MR. PARKER:  Thank you, Your Honor.  You read my  
16 mind.

17 BY MR. PARKER:

18           Q     All right.  So the first paragraph under building  
19 construction says, "Documentation concerning the adequacy of  
20 the size -- of the size of the proposed marijuana  
21 establishment to serve the needs of persons who are authorized  
22 to purchase recreational marijuana, building plans and  
23 supporting details."  Do you see that?

24           A     Yes, I do.

25           Q     Now, it doesn't say floor plans, does it?

1           A     No, it doesn't.

2           Q     And supporting details. Do you know what supporting  
3 details are being referenced or considered here?

4           A     That would be everything describing the  
5 establishment itself, or the dispensary.

6           Q     All right. So a floor plan could be a one-pager.  
7 Supporting details to a building plan would be more than a  
8 one-page floor plan; is that correct?

9           A     Right. It would be the operating procedures, you  
10 know, the inventory closing, storage, pathway for customers,  
11 size.

12          Q     Good enough. And then it says, "Effective and  
13 efficient building planning is demonstrated in the response."  
14 And now we go to a excellent response versus an average or an  
15 inadequate response. Do you see that?

16          A     Yes.

17          Q     All right. So an excellent response would be "The  
18 building place demonstrates a clear definition of work areas,  
19 estimation of acquired resources, and the duration of  
20 individual tasks, planning of scheduled activities with the  
21 estimated resources, duration are realistic and  
22 achievable within five to twelve months to be fully  
23 operational." You understand that?

24          A     Yes.

25          Q     So the 12-month requirement, is that 12 months from

1 the time a conditional license is provided to the floor plan  
2 or building plan actually being constructed and ready for use?

3 A The 12 months is between December 5th and when they  
4 become operational -- or final licensed by the Department.

5 Q Okay. And, again, if the scorers are using this  
6 document, page 396, as opposed to 391, why didn't you change  
7 it to say floor plan instead of building plan?

8 A It just wasn't changed.

9 Q So when Mr. Jolley was speaking yesterday and today  
10 and was using the word "ignorant" and "confused" -- do you  
11 remember him using those words?

12 A Not specifically, no.

13 Q You're smiling. Thought you may have remembered  
14 them.

15 So would you agree with me, sir, that there is no  
16 confusion here in that the word "building plans" are being  
17 used, as opposed to "floor plans"? We can agree with that;  
18 right?

19 A As far as the evaluators go?

20 Q The evaluation tools, yes. Or the scoring criteria,  
21 I should say.

22 Q Not on the part of the evaluators, no.

23 Q All right. And in fact the word "P.O. box" being  
24 allowed is not mentioned there, either.

25 A No.

1 Q Is that correct?

2 A That's correct.

3 Q So no P.O. box being indicated here, no information  
4 saying that, we don't need a building plan or location, is  
5 included here; is that correct?

6 A No, it's not.

7 Q So if the training and the scoring criteria discuss  
8 building plans and location verification, wouldn't it make  
9 sense that that's what the scoring should be based upon, as  
10 opposed to this change that you're speaking of that's not  
11 reflected in the training or the scoring criteria?

12 A Well, the evaluators were trained on evaluating  
13 floor plans. And the criteria actually references more of,  
14 you know, the floor plans and the ability to operate than it  
15 does a construction plan.

16 Q Well, it doesn't -- the word "floor plan" didn't  
17 show there at all. It says building plan. And in fact the  
18 training that we went over because I wanted to take it  
19 systematically, the training tool that you provided said  
20 "building verification location." It didn't say anything  
21 about floor plans. So tell me what training your speaking of  
22 that maybe used the word "floor plans" anywhere.

23 A I'd have to go back and look and see if it mentions  
24 floor plans.

25 Q Would you agree with me that the training

1 information we've gone through today, which we've gone through  
2 a couple of hundred pages already, didn't mention the word  
3 "floor plan"?

4 A Not that I've seen of what we looked at today.

5 Q And you agree with me that the scoring criteria does  
6 not mention the word "floor plan"

7 A I'd have to go through it.

8 Q Take a second.

9 A It doesn't specifically say "floor plan," but all  
10 the requirements and the criteria that they were looking for  
11 is -- would be found in a floor plan.

12 Q Well, not regulatory compliance. We've already  
13 talked about that. That's not going to be found in the floor  
14 plan; isn't that true?

15 A Sure it could. I think so. My belief is that --

16 Q In terms of location?

17 A Not as far as location, but in compliance to the  
18 other aspects of the regulations.

19 Q Good enough.

20 MR. PARKER: May I approach, Your Honor?

21 THE COURT: You may.

22 MR. PARKER: Thank you.

23 (Pause in the proceedings)

24 MR. PARKER: All right. I want to look at Exhibit  
25 109, Shane -- I believe this has been admitted, Your Honor --

1 page 31.

2 THE CLERK: I'm sorry.

3 MR. PARKER: No?

4 THE CLERK: 108's been admitted.

5 MR. PARKER: All right. Well, let me I can lay the  
6 foundation for it.

7 THE COURT: Okay. Is there a stipulation to 109?

8 MR. PARKER: This is the extraction report for Steve  
9 Gilbert produced by -- I believe it was produced by the DOT.

10 MR. KOCH: I think it's already admitted.

11 MR. PARKER: Yeah, I thought it was admitted, Your  
12 Honor. I had it highlighted as being admitted.

13 THE COURT: So Dulce now thinks it's admitted, too.  
14 It is. It's now admitted.

15 (Plaintiffs' Exhibits 109 admitted)

16 MR. PARKER: Okay. Here we go. Thank you. Thank  
17 you.

18 BY MR. PARKER:

19 Q So Exhibit 109, Mr. Gilbert, is the extraction  
20 report from your telephone. So if we could look at page 31  
21 and Entry 117.

22 A I can't see it on this one.

23 THE COURT: We're going to blow it up for you, I  
24 think. Although this one you may not be able to look, because  
25 it takes up a lot --



1 MR. PARKER: Paragraph number 5 is the one I want to  
2 look at, Shane, on this top group. Yeah, the paragraph on the  
3 top. That's it.

4 BY MR. PARKER:

5 Q Do you recall receiving this text message? Or I  
6 believe it's a text message.

7 THE COURT: How about we get the actual hard copy  
8 out for him. It's going to be really hard to adjust that one.

9 MR. PARKER: Well, I think it should be in one of  
10 volumes behind him.

11 THE COURT: It should.

12 MR. PARKER: Let me see if I can grab it for him.

13 (Pause in the proceedings)

14 THE COURT: And what page is the Bates number, Mr.  
15 Parker?

16 MR. PARKER: Your Honor, it's page 31, ST31.

17 THE COURT: So, sir, there's a number on the bottom.  
18 Oh. You've got it. Okay. And you can read it. Are you okay  
19 reading it from there?

20 THE WITNESS: Yes.

21 THE COURT: Okay.

22 BY MR. PARKER:

23 Q Do you recall receiving this text message, sir?

24 A Sure. I guess. I mean, I'd have to -- I mean,  
25 who's it from?

1 Q Well, I see Mr. Plaskon's name at the top,  
2 "Attendees." It looks like it reflects a meeting.

3 A It looks like it's a meeting.

4 Q Okay. Good. So tell me something. Where are these  
5 notes taken from? Because I got it as an exhibit based on an  
6 extraction report. But it does reflect a meeting. Did you  
7 discuss in a text a meeting held in your office?

8 A Oh. I don't know.

9 Q Okay.

10 A I'd have to refresh my memory. "Verify all --" I'm  
11 sorry.

12 Q No. Go right ahead. Read it.

13 A What's the question?

14 Q You could read it to yourself.

15 A Okay.

16 Q And I bring this to your attention because  
17 paragraph 4 talks about the change of ownerships. It says,  
18 "Pull out CHOWs that are needed to be completed so an  
19 applicant will know this matches." See that?

20 A Yes.

21 Q And it says, "Completed by close of business 11/15.  
22 These will be the priority ones that contractors will help  
23 with." So to me that means an employee for DOT is doing this  
24 verification. Is that correct?

25 A Yes. Because the CHOWS would be -- they're managed

1 by one of those program officers that we talked about earlier.

2 Q This says, "I don't have the names ahead of time. I  
3 can't make my deadline in Number 3 below." And then it says  
4 again, "Verify all owners have completed background check.  
5 Take ownership spreadsheet and create a background check."  
6 You see that?

7 A Yes.

8 Q Now, is the spreadsheet based on the information the  
9 applicants had previously provided coupled with the 2018  
10 application?

11 A I'm sorry. I don't understand that question.

12 Q Well, I'm trying to figure out what the spreadsheet  
13 -- where the spreadsheet would come from. It says, "Take  
14 ownership spreadsheet." You see that?

15 A Yes.

16 Q How is the spreadsheet created?

17 A It was created -- if I recall correctly, when we did  
18 the matching of ownership we created an ownership list, and  
19 that's the spreadsheet that must be referenced in this  
20 meeting.

21 Q And who -- would the employee -- would an employee  
22 of the DOT create the spreadsheet?

23 A Yes.

24 Q And where would the information for the spreadsheet  
25 come from?

1           A     The applications.

2           Q     Okay.  So the entire -- again, this goes back, as  
3 you said before, the spreadsheet and any verification that was  
4 done on the background of any owner came just from the  
5 information the applicants provided?

6           A     That's correct.

7           Q     All right.  Be it a CHOW, in the form of an a change  
8 in ownership or a transfer of ownership or initial  
9 application, that's the parameters that you would check?

10          A     That's correct.

11          Q     All right.  In terms of monopolies, if you don't  
12 have all of owners identified, how do you determine whether or  
13 not there are ownership interests in other applicants'  
14 proposed operations?

15          A     Well, we have this list, because we could refer to  
16 this list of the master owners, officers, and board members,  
17 which is now posted on the Website.  That was our listing of  
18 owners, officers, and board members.

19          Q     Right.  But if -- let's say that Thrive had an owner  
20 that had 20 percent interest in Thrive that they did not  
21 identify and Nevada Organics had someone that had 20 percent  
22 interest in Nevada Organics that they didn't identify.  Would  
23 that constitute a monopoly if those two companies obtained a  
24 license in the same jurisdiction but you were not aware of the  
25 ownership interests of both?

1           A     I'd have to run the analysis. I don't know if -- or  
2 have somebody do it, actually, to answer that question.

3           Q     Do you understand the dilemma there?

4           A     Not -- not totally.

5           Q     The first level of the dilemma is that you would  
6 have to get actual disclosures of the owners. You understand  
7 that?

8           A     Uh-huh. Yes.

9           Q     Is that yes?

10          A     Yes.

11          Q     And then you would have to -- if you had full  
12 disclosure of the ownership, then you'd have to determine if  
13 any of those owners had interests in more than one applicant's  
14 application for a single jurisdiction. Isn't that correct?

15          A     That's correct.

16          Q     So if you don't have full disclosure of all of the  
17 owners of each of proposed applicant or licensee, you could  
18 never determine if you had a monopoly. Isn't that correct?

19          A     If you're referring to the shareholders --

20          Q     Yes.

21          A     -- we didn't -- we don't require that information,  
22 so --

23          Q     But the statute did. If you complied with the  
24 statute, you'd actually have a way of determining monopolies  
25 through ownership. Isn't that correct?

1           A     I'd have to get a legal opinion on that one.

2           Q     Well, let's look at Exhibit 108, page 21. And this  
3 is an extraction report from Mr. Plaskon's telephone. And  
4 I'm concerned with Item 211.

5                     Do you recall this situation, Mr. Gilbert? Because  
6 it mentions to you from Mr. Plaskon -- it says, "We are  
7 continuing monopoly analysis today. Do you want to check in  
8 later today with Dinnette and I?" Do you see that?

9           A     That's me going to him?

10          Q     Okay.

11          A     Or is that --

12          Q     I thought it was him going to you.

13          A     Okay. Possibly. I mean, that was towards the end  
14 of, you know, the application period, the 90 days.

15          Q     All right. Do you know what the result of the  
16 analysis was?

17          A     Yeah. That there was no monopoly that we could  
18 determine.

19          Q     And how did you come to that conclusion?

20          A     We had a -- we had a chart that we put together with  
21 the help of Dinette that showed all the owners, officers, and  
22 board members that were listed on the applications and then  
23 their current -- their current licenses or certificates that  
24 they hold, license, and then compared them that way.

25          Q     Okay. But, again, you're only comparing what they

1 disclose; isn't that correct?

2 A That's correct.

3 Q So you're not doing anything independent of the  
4 applicants' own information. And so if they don't disclose  
5 all of the owners, you've not done a full monopoly analysis;  
6 isn't that correct?

7 A We didn't -- again, we didn't request the  
8 shareholders of the company, so we didn't have that  
9 information.

10 Q All right. Can you tell me how it was determined  
11 what the liquidity number needed to be for each application?

12 A That 250,000 --

13 Q Yes, sir.

14 A -- in liquid assets? I think that was used from  
15 2014 or the medical.

16 Q All right. How about in terms of one years'  
17 operation?

18 A I don't know if there was a -- I'm sorry. Can you  
19 be more specific in that question?

20 Q Yes. Was there a determination or a threshold  
21 determination made on how much money each applicant would need  
22 to demonstrate that they had enough money to run the operation  
23 for a year?

24 A No. That was -- that was up to the evaluators', you  
25 know, expertise in the fields that they came from to determine

1 if the size and the extent of plan covered.

2 Q Well, how would they know? How would they come up  
3 with a number that would be used objectively for each  
4 applicant? For example, the average 5,000-square-foot  
5 building that would house the operation, someone would need  
6 \$3.5 million to run that operation for a year. Was an  
7 analysis performed to determine that amount and whether the  
8 applicant had sufficient funds for that one-year operation?

9 A Well, to answer your question, an analysis wasn't  
10 done.

11 Q Thank you. And the reason I say that is because I  
12 do not see anything in the DOT documentation showing that an  
13 analysis was done.

14 So without an analysis how can they include in your  
15 evaluation or your scoring a base line to tie to the ballot  
16 question that says "directly and demonstrably related to the  
17 operation of a marijuana establishment," if there's been no  
18 analysis done of what it takes to run one for a year? And I  
19 didn't see it any of your training, either.

20 And let me stop there. Before you answer the  
21 question answer this one. Did you include --

22 THE COURT: So you want to strike that one and start  
23 over?

24 MR. PARKER: I want to strike that one.

25 //



1 BY MR. PARKER:

2 Q I want to make sure we're clear. I didn't see it in  
3 your training. Were there any training slides related to a  
4 determination of what it costs to run a recreational marijuana  
5 establishment for a year?

6 A Not that I can recall.

7 Q All right. So no training slides, no analysis. Did  
8 you leave it to evaluators to determine per applicant whether  
9 or not that applicant had enough money to run it for a year?

10 A We did. Because we couldn't determine -- we didn't  
11 know what the applications were going to include, and they --  
12 based on their expertise and their experience they -- they  
13 looked at the budget and compared it to the plan.

14 Q Had a single evaluator ever operated a marijuana  
15 establishment for a year?

16 A Not -- I don't think -- no.

17 Q Okay. So when you said based upon their experience,  
18 they didn't have any experience in running a marijuana  
19 establishment in the state of Nevada. Isn't that correct?

20 A That's correct.

21 Q So it wasn't based on experience, and there was no  
22 training, and there was no analysis done by the DOT. So isn't  
23 it a fair statement, sir, that there was no way to objectively  
24 determine whether or not the evaluators could determine the  
25 number of -- the amount of money, the amount of money

1 necessary to run a recreational marijuana establishment for a  
2 year?

3 A I think there was. I mean, some of these questions  
4 might be better to be asked to the evaluators themselves to  
5 see what they experienced. However, they looked at the  
6 comprehensive plan that was provided to them in the non-  
7 identified section and then the budget to see if there was  
8 enough funds to cover the plan.

9 Q Well, sir, you've already told me that none of them  
10 had medical marijuana -- I'm sorry, I keep on saying medical  
11 -- none of them had recreational marijuana experience in the  
12 state of Nevada. You told me no analysis was done and no  
13 training was done. So you left it up to people without  
14 experience to come up with a number to run a recreational  
15 marijuana operation in the state of Nevada; is that correct?

16 A Well, that's -- no, that's not correct. I think --  
17 so the non-identified group had three people on it.

18 Q This is part of the identified portion.

19 A Oh. I thought you --

20 Q No, no. This is -- the financial ability is a part  
21 of the identified portion; isn't that correct?

22 A It is part of it, yes.

23 Q Okay. So let's stay focused. Let's stay on this  
24 topic, that is, the ability to finance the operation of a  
25 recreational marijuana establishment for a year. You told me

1 that there was no training on it; isn't that correct?

2 A Can you repeat what you just said.

3 Q Yes. You said there was no training done in terms  
4 of educating the evaluators on how to determine if an  
5 applicant had sufficient amount of money to run a recreational  
6 marijuana establishment for a year.

7 A Well, there was training on the financial side of it  
8 by Damon Hernandez. So I don't know if I can answer that  
9 specifically. I think the question you asked earlier, if I  
10 may, was if there was any analysis done and provided to them.

11 Q That was one of my questions.

12 A There wasn't on the analysis.

13 Q There was no analysis. I understood that. But when  
14 I looked through your training materials there was no training  
15 dealing with that part of the application. Do you recall  
16 seeing any training slides that dealt with that?

17 A No, there wasn't.

18 Q All right. So I -- so my question again is if there  
19 was no training, there was no analysis, and we know that they  
20 did not have experience in the recreational marijuana --

21 THE COURT: I'm still listening.

22 MR. PARKER: I know you are. I've seen you do this  
23 before.

24 THE COURT: Keep going. I'm grabbing a book.

25 MR. PARKER: I'm with you.

1 BY MR. PARKER:

2 Q Would you agree with me that you left it up to  
3 inexperienced evaluators to come up with a number?

4 A No, I would not.

5 Q Well, what number was that? Tell me that. What  
6 number did they arrive at that a applicant would need to run a  
7 medical marijuana establishment for a year?

8 A That would be a question I think that the evaluators  
9 would have to answer, because --

10 Q You don't know the answer to that question, sir?

11 A No.

12 Q The person who trained the trainers and was the go  
13 to person to field questions that could not be answered by the  
14 trainers does not know what the threshold number would be to  
15 run a recreational marijuana location in Nevada for a year; is  
16 that correct?

17 A We did not -- we did not provide that number to  
18 them.

19 Q All right. How did -- how is determined what  
20 percentages of taxes paid to Nevada would equate to serve the  
21 scoring? For example, I believe if we were to put the scoring  
22 criteria back up, taxes are -- let's see if I can find the  
23 taxes for you.

24 THE COURT: Do we need to break? I mean, I've got  
25 seven minutes. If you're coughing real, bad we can --

1           MR. KOCH: I'm fine. This one question will  
2 probably take seven minutes.

3           THE COURT: That is likely.

4 BY MR. PARKER:

5           Q     So financials, the taxes indicate that if you've  
6 paid zero to 499,000, you get 1 point, 500,000 to 999,000 2  
7 points. Do you recall that?

8           A     Yes.

9           Q     Who came up with those numbers and those lines of  
10 demarcation?

11          A     I think Mr. Pupo did. This was part of the exercise  
12 that Kara and Jorge and I did when we comparing the scoring  
13 criteria to the regulations.

14          Q     Would you agree with me that that portion has  
15 nothing to do with being directly and demonstrably related to  
16 the operation of a recreational marijuana facility?

17          A     I think it shows the ability to run a successful  
18 business in the state of Nevada.

19          Q     You're saying simply paying taxes on something that  
20 could be related to a construction business or a pet store  
21 would be -- could be directly related to running a marijuana  
22 store?

23          A     Maybe not directly to the marijuana business per se.

24          Q     All right. So then why -- wouldn't you agree with  
25 me that the bigger the company the more points likely they

1 will receive because they pay more taxes?

2 A I don't know if I can -- bigger revenue-wise?

3 Q Yes.

4 A Yes.

5 Q All right. And does that matter, the larger the  
6 company is the better you can run a marijuana retail or  
7 dispensary?

8 A Can you -- just -- I'm sorry.

9 Q Yeah. Does it matter how much you paid in taxes  
10 whether or not you can run and operate a recreational  
11 marijuana establishment?

12 A No, it's not. But that's part of the criteria that  
13 is in the regulations.

14 Q So then the question becomes why wasn't simply a  
15 threshold number used, as opposed to giving higher scores for  
16 higher payers of taxes?

17 A That would probably be a better question for Mr.  
18 Pupo. I'm sorry.

19 Q You didn't decide these figures, did you?

20 A No, I didn't. Like I said, we were sitting, if I  
21 recall correctly, discussing the scoring and Mr. Pupo came up  
22 with those.

23 Q All right. Same with the liquidity number. Who  
24 came up with that?

25 A I think that was carried over from the 2014

1 application process.

2 Q So you'd agree with me that, again, this scoring  
3 system for the liquidity again favors the bigger companies?

4 A Well, I think that's just a minimum amount required,  
5 you know, just to show that you do have liquid funds.

6 Q Well, if you look at the financial statements --  
7 again, this is DOT394 -- there points that increase as you  
8 demonstrate greater assets. So 250,000 1 point, in excess of  
9 3.5 million is 10 points. Are you familiar with that?

10 A Yes.

11 Q So does it -- why would it matter -- after you've  
12 reached the threshold of two fifty why does it matter in terms  
13 of liquidity whether or not that amount of money is necessary  
14 for purposes of running a marijuana establishment?

15 A Well, the liquidity wouldn't necessarily be enough  
16 to open up a business within 12 months.

17 Q Okay.

18 A The liquidity -- you'd have to look at the budget,  
19 and there's a lot of aspects that go into what the evaluators  
20 I think looked at to come up with these determinations.

21 Q The liquidity amount was at two fifty; right?

22 A Yes.

23 Q All right. So this is taken from the liquid and  
24 illiquid asset figure.

25 MR. PARKER: Make that whole section bigger, Shane,

1 so he can see where it's coming from.

2 BY MR. PARKER:

3 Q Are you familiar with that, sir?

4 A No.

5 Q These deal with the financial statements. Or this  
6 information comes from the financial statements of the  
7 applicants.

8 A Yeah, I'm familiar with it.

9 Q All right. So after you've demonstrated the amount  
10 of liquidity necessary, this provides scoring for the more  
11 money you show the more points you get; right?

12 A Yes.

13 Q You said you had nothing to do with setting these  
14 parameters?

15 A Taxes. Taxes is what I said I didn't have --

16 Q Did you have anything to do with these parameters?

17 A I don't recall if -- how we came to the conclusion  
18 on these. I don't know if -- I mean, I wasn't the final say  
19 in it, of course.

20 Q All right. So you don't recall?

21 A No, I don't.

22 Q Okay.

23 THE COURT: Would this be a good place to break, Mr.  
24 Parker?

25 MR. PARKER: It would be, Your Honor. I was about



1 to change --

2 THE COURT: All right. It's 4:45. I'm going the  
3 let the witness leave before people change minds.

4 Sir, do you want to come back on Tuesday, or do you  
5 want for your counsel to negotiate a different start?

6 THE WITNESS: If I fly in Tuesday morning, is that  
7 fine?

8 THE COURT: I was going to start about 9:30.

9 THE WITNESS: Okay.

10 THE COURT: What time can you get here?

11 THE WITNESS: I'll have to come Monday night. But  
12 that's fine. I'd like to get it over.

13 MR. KOCH: I'm sorry. I couldn't hear, Your Honor.

14 THE COURT: He said yes.

15 Okay. We'll see you Tuesday morning. You have a  
16 nice weekend.

17 All right. So, team --

18 We can go off.

19 (Court recessed at 4:45 p.m., until the following  
20 Tuesday, June 18, 2019, at 9:30 a.m.)

21 \* \* \* \* \*

22

23

24

25