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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO, CENTRAL DIVISION

Department 73

Hon. Joel R. Wohlfeil

LARRY GERACI, an individual, )

Plaintiff, )

vs. ) 37-2017-00010073-CU-BC-CTL

DARRYL COTTON, an individual; )

and DOES 1 through 10, )

inclusive, )

Defendants. )

\_\_\_\_\_ )

AND RELATED CROSS-ACTION. )

\_\_\_\_\_ )

Reporter's Transcript of Proceedings

JULY 9, 2019

Reported By:

Margaret A. Smith

CSR 9733, RPR, CRR

Certified Shorthand Reporter

Job No. 10057775

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1 July 9, 2019; San Diego, California; 8:50 a.m.

2 Hon. Joel R. Wohlfeil

3 -- o0o --

4 THE COURT: Counsel, let's spend a few moments  
5 before we bring the jury in. As I'm making my way  
6 through the jury instructions, I have come across some  
7 interesting issues, one of which is the instructions  
8 involving expert witness testimony.

9 Now, I understand that one or both of you have  
10 said nobody was designated to testify as an expert, but,  
11 clearly, Ms. Austin, probably Mr. Schweitzer -- I don't  
12 know if there's others. But there has been what I would  
13 normally characterize as expert opinion testimony  
14 provided by the witnesses.

15 Now, there is the lay opinion instruction, 223.  
16 But we're going to have to spend a little time sorting  
17 out that.

18 MR. WEINSTEIN: Okay.

19 THE COURT: So I'm including those types of  
20 instructions in the batch that you -- sometime before  
21 the close of business today.

22 There's other examples, but I just wanted to  
23 note that while it was at the top of my mind.

24 Now, let me go back to plaintiff's counsel.  
25 How much longer will you have with Mr. Schweitzer?

26 MR. TOOTHACRE: I'm guessing an hour.

27 THE COURT: You need another hour with  
28 Mr. Schweitzer?

1 MR. TOOTHACRE: We're just getting into what  
2 he's done. I've cut out a bunch this morning. So I'm  
3 not sure.

4 THE COURT: All right. So you're not going to  
5 be going back over a lot of the same documents that had  
6 been previously admitted into evidence?

7 MR. TOOTHACRE: I'm going to start where I  
8 started yesterday -- no. I'm just kidding. No, we're  
9 not.

10 THE COURT: Okay. So you have an hour with  
11 him.

12 And let me go to defense counsel.

13 How much time will you have with cross?

14 MR. AUSTIN: Thirty to 40 minutes.

15 THE COURT: All right. Well, that sounds like  
16 he'll be with us until the morning break.

17 And then who does Plaintiff have lined up after  
18 Mr. Schweitzer?

19 MR. TOOTHACRE: Firouzeh Tirandazi will be  
20 here, your Honor.

21 MR. WEINSTEIN: I've asked her to be here  
22 through her attorney at 9:45. So she should be here in  
23 plenty of time.

24 THE COURT: But your estimate was a half hour  
25 or so?

26 MR. TOOTHACRE: She is not lengthy.

27 THE COURT: And then how about cross?

28 MR. AUSTIN: Cross will be short. Like, no



1 more than 20 minutes.

2 THE COURT: All right. And is that plaintiff's  
3 last witness in your case?

4 MR. TOOTHACRE: Subject to --

5 THE COURT: Subject to Mr. Bartell tomorrow  
6 morning?

7 MR. TOOTHACRE: Yes, your Honor.

8 THE COURT: Okay. So who will you be calling  
9 after the second witness by the plaintiffs?

10 MR. AUSTIN: That would be Mr. Hurtado. Would  
11 it be safe to say I should tell him to be here at 1:30?

12 THE COURT: No. I think it's safe to tell him  
13 to be here by about 11 o'clock.

14 MR. AUSTIN: 11 o'clock.

15 THE COURT: Yeah. So even if we don't have as  
16 much as an hour, I suspect we're going to have something  
17 before the lunch hour that I want to take advantage of.

18 And you're going to spend how much time with  
19 Mr. Hurtado?

20 MR. AUSTIN: Possibly two hours.

21 THE COURT: Two hours. Okay.

22 And then how about cross?

23 MR. WEINSTEIN: Your Honor, so that's,  
24 obviously, Mr. Austin's estimate. I think Mr. Hurtado  
25 is a short witness because I think he has very little  
26 personal knowledge of the facts. So I think he's going  
27 to be much shorter. And my cross will be short if his  
28 direct is short. It depends.

1 THE COURT: I gotcha. That's reasonable.

2 And is he your last witness today, Counsel, or  
3 do you have somebody else? Well, you have Mr. Cotton.

4 MR. AUSTIN: Yeah. Mr. Cotton.

5 THE COURT: Now, is it your intention to call  
6 him before, or after Mr. Bartell?

7 MR. AUSTIN: Oh. I mean, I would have  
8 preferred after, but if that doesn't work for the Court.

9 THE COURT: The Court's intention is not to  
10 squeeze, in this case, the defense to make you call  
11 witnesses that you prefer not to have to call only  
12 because Plaintiff has one witness that you want extra  
13 time to call.

14 So I don't mind ending a little bit earlier  
15 today if I'm being told by counsel that the last two  
16 witnesses in the case would be Mr. Bartell and then  
17 Plaintiff rests and Mr. Cotton and then defense will  
18 rest. Is that correct?

19 MR. AUSTIN: Yes, your Honor.

20 THE COURT: How much time do you estimate  
21 you'll have -- let me go back over here.

22 How much time with Mr. Bartell on direct?

23 MR. TOOTHACRE: I'm thinking 30 to 45 minutes  
24 at the most.

25 THE COURT: And how about you on cross?

26 MR. AUSTIN: Half that.

27 THE COURT: How about Mr. Cotton, when it's  
28 your turn for redirect?

1 MR. AUSTIN: Forty-five minutes to an hour.

2 THE COURT: All right.

3 MR. AUSTIN: That's --

4 THE COURT: There's nothing unreasonable about  
5 that.

6 But, Counsel, what I'm hearing if -- well, is  
7 it your preference that you not have to call Mr. Cotton  
8 until after Mr. Bartell?

9 MR. AUSTIN: I would like to hear what  
10 Mr. Bartell has to say. I would like to go after.

11 THE COURT: All right. That's fine.

12 So what we're going to tell the jury is they're  
13 going to have a short day today, sometime this afternoon  
14 is what I'm estimating.

15 And then more than likely have a shorter day  
16 tomorrow, not come in on Thursday.

17 And when they come here the first thing Monday  
18 morning on the 15th, I'll instruct, you two will argue,  
19 and they'll have the case early to mid afternoon, Monday  
20 afternoon.

21 Counsel, once I tell them that, it's laid in  
22 cement. All right. There is no deviating from that.

23 So let me go to plaintiff's side. Is there  
24 anything that I just said that sounds unreasonable?

25 MR. WEINSTEIN: No, your Honor.

26 MR. TOOTHACRE: No.

27 THE COURT: Okay. Defense side?

28 MR. AUSTIN: No, your Honor.

1 All right. That's how we'll do it. Time  
2 permitting either today or tomorrow afternoon we will  
3 spend -- well, probably tomorrow afternoon, since you  
4 will not have had a chance to look at the instructions  
5 that I have put together.

6 So we'll take that up tomorrow.

7 Now, before -- Madam Deputy, do we have our  
8 jurors?

9 THE BAILIFF: Yes, your Honor.

10 THE COURT: Wow. They have assembled before  
11 9 o'clock. Sounds like you have a captive audience,  
12 Counsel. That's always good news for the lawyers and  
13 the parties.

14 And to go back to plaintiff's side, anything  
15 else before we bring our jury?

16 MR. TOOTHACRE: I just need to grab our exhibit  
17 books out of the --

18 THE COURT: Why don't you do that now, Counsel.

19 Let me go to defense. Anything else before we  
20 bring our jury in?

21 MR. AUSTIN: Yes. Madam Clerk said yesterday  
22 to prepare Exhibit 381. So I --

23 THE CLERK: 281.

24 THE COURT: 281. I don't know. What is it?

25 THE CLERK: It was marked yesterday, your  
26 Honor. I just need to have --

27 THE COURT: Okay. So lodge that with -- now,  
28 Counsel, did you have an extra copy for opposing

1 counsel?

2 THE REPORTER: Your Honor, the reporter has a  
3 question. Just regarding Thursday, will that be a day  
4 that's reported? The jury will be off?

5 THE COURT: Good question. Counsel, do you  
6 want the reporter here on Thursday morning when we go  
7 over the instructions?

8 MR. WEINSTEIN: I do not need a reporter for  
9 that.

10 THE COURT: Counsel?

11 MR. AUSTIN: Oh, I'm sorry?

12 THE COURT: Do you waive reporting of the jury  
13 instruction conference on Thursday? I suspect, though,  
14 counsel that we may be able to accomplish all that on  
15 Wednesday and maybe relieve you -- you also of having to  
16 come in on Thursday.

17 So but what I'm hearing is let's have the  
18 reporter here through and including but not necessary on  
19 Thursday?

20 MR. AUSTIN: That sounds good, your Honor.

21 MR. WEINSTEIN: Sounds good, your Honor.

22 THE COURT: All right. So Madam Reporter --  
23 Counsel, do you have everything you need?

24 MR. TOOTHACRE: Yes, sir.

25 THE COURT: Mr. Schweitzer, where are you?

26 THE WITNESS: Yes, your Honor.

27 THE COURT: Why don't you come up here and take  
28 the witness stand.

1           Madam Deputy, you can bring in the jury.

2           (Discussion off the record.)

3           THE COURT: All right. Good morning,  
4 everybody. I can't begin to tell you how good it is to  
5 see every single one of you. So -- and we do have  
6 everybody. Sometimes along the way, we lose one or two  
7 people. Thank you. And I know you were out there a  
8 couple minutes before 9:00. We had a few books we had  
9 to put away. So it took us a few extra moments. We're  
10 sailing along.

11           And, again, I want to emphasize that I am  
12 constantly conferring with counsel about scheduling. As  
13 soon as I get a more updated estimate, I want to provide  
14 it to you. Nobody wants to be kept in the dark.

15           So what I'm anticipating is we'll have a  
16 shorter day today, sometime this afternoon, well before  
17 4:30 where we will be done with today's evidence.

18           Similarly, I expect we'll have a shorter day  
19 tomorrow, meaning 4:00, 4:30 when we will be done with  
20 the evidence.

21           There's one witness that isn't available until  
22 tomorrow, which is why we're probably going to end  
23 shorter today. And then I expect all the evidence will  
24 be done sometime tomorrow afternoon.

25           I'll then have to spend a significant amount of  
26 time with the lawyers to finalize the jury instructions  
27 and the verdict forms.

28           So you are going to be off on Thursday in

1 addition, of course, to Friday.

2 And then when you come in Monday, the 15th,  
3 I'll instruct you, meaning, I'll give you the law. The  
4 lawyers will argue it. And I expect you'll have the  
5 case to begin your deliberations well before the close  
6 of business on Monday, the 15th.

7 So we are way ahead of what we originally told  
8 you when you came in here. And that's a tribute to how  
9 well the lawyers and the parties are cooperating and us  
10 trying to get you the evidence that you need.

11 So I just want to make sure you were aware of  
12 that at the beginning of today.

13 Mr. Schweitzer, welcome back.

14 You understand you're still under oath?

15 THE WITNESS: I do.

16 THE COURT: All right. Don't strain your neck  
17 by leaning over to the microphone. If you need to  
18 adjust that, you feel free to do so.

19 Counsel, please continue your direct  
20 examination.

21 MR. TOOTHACRE: Thank you, your Honor.

22

23 Abhay Schweitzer,  
24 being called on behalf of the plaintiff/cross-defendant,  
25 having been previously duly sworn, testified as follows:

26 \ \ \

27 \ \ \

28 \ \ \

1 (Resumed direct examination of Abhay Schweitzer)

2 BY MR. TOOTHACRE:

3 Q Good morning, Mr. Schweitzer.

4 A Good morning.

5 Q Can I direct your attention to Exhibit 49,  
6 which I show is in evidence, your Honor.

7 THE COURT: It is.

8 BY MR. TOOTHACRE:

9 Q Did you author that email, Mr. Schweitzer?

10 A Yes.

11 Q Okay. I would like to direct your attention to  
12 the second full paragraph. I'm going to ask you what  
13 you meant by that comment.

14 A What I meant by that comment -- and it's  
15 something that was covered earlier -- is that there was  
16 a conflict between the information bulletin and what the  
17 Municipal Code says. So when we got the official  
18 comments from staff, after they started reviewing the  
19 merits of the project, they indicated that they would  
20 not be able to support it since it was in the wrong  
21 zone, based on the Municipal Code, not the information  
22 bulletin.

23 Q And then the last paragraph on that particular  
24 exhibit, you indicate that other than that issue, you're  
25 ready for full submittal?

26 A Yes. Let me correct what I just said. This  
27 was prior to the full submittal. This was the comments  
28 we received from staff after the submitted completeness



1 review.

2 Q Okay. And let me direct your  
3 attention -- strike that.

4 MR. TOOTHACRE: Our Honor, I'd like to move  
5 into evidence Exhibit 50.

6 THE COURT: Any objection?

7 MR. AUSTIN: No, your Honor.

8 THE COURT: Exhibit 50 will be admitted into  
9 evidence.

10 MR. TOOTHACRE: Thank you, your Honor.

11 (Premarked Joint Exhibit 50, Email to Larry  
12 Geraci and Rebecca Berry from Abhay Schweitzer  
13 Re Update, dated 12/02/16, with attachment, was  
14 admitted into evidence.)

15 BY MR. TOOTHACRE:

16 Q Mr. Schweitzer, Exhibit 50 appears to be an  
17 email string. The last one to Larry Geraci, Becky  
18 Berry, and Jim Bartell, from you on December 2nd, 2016.  
19 And I wanted to focus on the second paragraph again and  
20 ask you if the City was still focusing on the conflict  
21 between the Bulletin 190 and the Municipal Code at this  
22 point in time?

23 A Yes.

24 Q And what was your purpose in sending this --  
25 this email on December 2nd, 2016?

26 A The general purpose was to give the clients an  
27 update on the status.

28 Q Okay. And the third paragraph, you indicate

1     **that there was some good news going?**

2           A     Yes. We had submitted to the City the drawings  
3     which proposed the dedication so that we could have more  
4     than 100 feet of separation from the residential zone.  
5     And there was no comment saying that they would not  
6     accept that at this stage. And I thought that was good  
7     news. And that's why I sent the email.

8           **Q     And so, apparently, the City was not going to**  
9     **have you rectify or propose any other plans other than**  
10    **the dedication?**

11          A     Based on the information they gave us at that  
12    time, that's what we understood.

13           MR. TOOTHACRE: Okay. Your Honor, I'd offer  
14    57.

15           THE COURT: Any objection?

16           MR. AUSTIN: No objection.

17           THE COURT: Exhibit 57 will be admitted into  
18    evidence.

19           (Premarked Joint Exhibit 57, CUP Submittal  
20    Plans - CUP Submittal 1 dated 02/22/2017,  
21    was admitted into evidence.)

22    BY MR. TOOTHACRE:

23          **Q     Do you have that in front of you,**  
24    **Mr. Schweitzer?**

25          A     I do.

26          **Q     And, generally, what is Exhibit 57? I mean,**  
27    **real generally. It's a 16-page document.**

28          A     Yes. So what this is -- what this exhibit is

1 is the copy of the drawings which we submitted as part  
2 of the first full submittal after the completeness  
3 review.

4 **Q And there are 16 documents in there. Can you**  
5 **just generally describe what they are.**

6 A Yes. Page 1 is the title sheet. It's the  
7 general summary of the project.

8 Page 2 of the exhibit are notes which reflect  
9 conditions that this particular project would have to  
10 meet in order for it to be approved.

11 On Page No. 3 of the exhibit is the topographic  
12 survey, which we had discussed before.

13 Page 4 is the existing site plan, which we've  
14 also discussed before.

15 Page 5 is the proposed site plan, this being  
16 more developed than the previous exhibits that we looked  
17 at.

18 Page 6 deals with storm water prevention  
19 measures during and after construction.

20 Page 7 shows, again, the dedication and the  
21 full width of the right-of-way, which we previously  
22 discussed, this one being in more detail.

23 Page 8, this is the existing floor plan of the  
24 building, as it stood at that time.

25 Page 9 is the proposed building, the floor plan  
26 for that particular building.

27 Page 10, this is a drawing -- another floor  
28 plan. The purpose of it is to show that we're meeting

1 the egress requirements from the California Building  
2 Code.

3 Page 11, this is a security diagram. These  
4 particular projects have very specific security  
5 requirements. And we have to depict that graphically so  
6 that City staff can have evidence that we're meeting the  
7 conditions which we have to meet that relate to the  
8 security of the facility.

9 Page 12 is the proposed roof plan.

10 Page 13 is a floor plan showing the proposed  
11 lighting. Lighting is also a particular requirement on  
12 these projects, which is why we prepared this drawing.

13 Page 14 shows the proposed elevations of the  
14 building.

15 Page 15 shows a -- two sections: One of the  
16 entire site on the bottom, going from the street towards  
17 the back of the property; and then what you see on the  
18 top is a section cut through the property from one side  
19 of the property line to the other.

20 Page 16, this is a drawing prepared by another  
21 consultant, Sam Wade Landscape Architect. And this is  
22 the landscape development architect plan.

23 **Q Okay. This is the first full submittal to the**  
24 **City?**

25 **A** That's correct.

26 **Q On Mr. Geraci's project?**

27 **A** That's correct.

28 **MR. TOOTHACRE:** Your Honor, I'd move 58 into

1 evidence.

2 THE COURT: Any objection?

3 MR. AUSTIN: No objection, your Honor.

4 THE COURT: Exhibit 58 will be admitted.

5 MR. TOOTHACRE: Thank you, your Honor.

6 (Premarked Joint Exhibit 58, Cycle Issues  
7 Responses for Completeness Review dated  
8 02/24/2017, was admitted into evidence.)

9 BY MR. TOOTHACRE:

10 Q Mr. Schweitzer, do you recognize Exhibit 58?

11 A Yes, I do.

12 Q And what is Exhibit 58?

13 A What Exhibit 58 is these are cycle issue  
14 responses. In essence, this is a letter which we write  
15 to the City where we explain to them how we address all  
16 of the comments which we received from them.

17 In particular, this one deals with the  
18 submitted completeness review. The reason we prepare  
19 this is to assist them as they go through our plans to  
20 be able to find out how and where we're answering any  
21 corrections that they may have.

22 MR. TOOTHACRE: Okay. Your Honor, I'd move 65  
23 into evidence. And I've got to switch books.

24 THE COURT: Any objection?

25 MR. AUSTIN: No, your Honor.

26 THE COURT: Exhibit 65 will be admitted.

27 \ \ \

28 \ \ \

1 (Premarked Joint Exhibit 65, Email to Abhay  
2 Schweitzer from Firouzeh Tirandazi  
3 FW PTS 520606 - Federal Boulevard MMCC, dated  
4 3/14/17, was admitted into evidence.)

5 MR. TOOTHACRE: You have to switch books too,  
6 Mr. Schweitzer.

7 THE WITNESS: Okay.

8 BY MR. TOOTHACRE:

9 Q Are you on Exhibit 65, Mr. Schweitzer?

10 A I'm ready.

11 Q And what is this exhibit?

12 A This is an email from Firouzeh Tirandazi, who  
13 at the time was a development project manager from the  
14 City of San Diego for this particular project. And, in  
15 summary, she introduces herself as the development  
16 project manager, and then she also states that the  
17 project is located in the CO-2-1 zone and that per the  
18 San Diego Municipal Code, MMCCs are not permitted in  
19 that zone and, therefore, staff would be recommending  
20 denial. She furthermore asks if in spite of that if we  
21 want to continue the application or if we want to  
22 withdraw it.

23 Q And did you respond that you want to continue  
24 with the application?

25 A I believe I did.

26 Q In fact, hadn't the zoning been changed a day  
27 prior to this and she just had not received word at that  
28 time?

1           A       That's what I believe, but I don't recall the  
2 exact date which the zoning was changed.

3           **Q       Okay. Let me have you -- or strike that.**

4           MR. TOOTHACRE: Your Honor, I'd like to move 66  
5 into evidence.

6           THE COURT: Any objection?

7           MR. AUSTIN: No objection.

8           THE COURT: Exhibit 66 will be admitted.

9           (Premarked Joint Exhibit 66, Letter from City of  
10 San Diego to Barbara Harris dated 03/14/2017,  
11 was admitted into evidence.)

12 BY MR. TOOTHACRE:

13           **Q       Have you seen that document before,**  
14 **Mr. Schweitzer?**

15           A       Yes, I have.

16           **Q       And what is this document?**

17           A       This document -- so once the City has gone  
18 through one full review of the project, the development  
19 project manager prepares a letter summarizing what has  
20 happened any major issues. Sometimes it contains the  
21 following steps. And that is provided to us along with  
22 the corrections from each individual reviewer. And this  
23 is the letter only.

24           **Q       Okay. And on the second paragraph, she**  
25 **indicates enclosed are posted notice of application and**  
26 **verification of posting public notice forms. Do you**  
27 **recall receiving that?**

28           A       I do.

1 MR. TOOTHACRE: Okay. I'd like to introduce  
2 Exhibit 67, your Honor.

3 THE COURT: Any objection?

4 MR. AUSTIN: No, your Honor.

5 THE COURT: Exhibit 67 will be admitted.

6 (Premarked Joint Exhibit 67, Email from Jim  
7 Bartell to Gina Austin dated 03/15/2017, was  
8 admitted into evidence.)

9 BY MR. TOOTHACRE:

10 Q This particular email string, Mr. Schweitzer,  
11 starts from the rear and goes forward. But I would like  
12 to focus on page -- on page 02, the second page, and  
13 come forward to 01.

14 And ask you what this email string represents.

15 A This is an email string based on a previous  
16 email we just looked at. It appears that I had  
17 forwarded Firouzeh's email to Jim Bartell, I believe.  
18 Give me a moment. Let me just make sure.

19 Q Sure.

20 A So it appears that Firouzeh had sent the email  
21 to myself with a copy to Becky. Subsequent to that, I  
22 received, which is what you'll see at the top of page 2,  
23 a response from Larry to myself and to Jim Bartell.

24 Q And what was Larry's response?

25 A He was asking for us to explain what Firouzeh  
26 had stated in her original email.

27 Q And that was -- was that the -- she had  
28 recommended denial because it was not in the correct



1 zone?

2 A That's correct.

3 Q Okay. And Jim Bartell indicates in this email  
4 string that Firouzeh had just called him and told her --  
5 told Mr. Bartell that Jeff Murphy spoke to her and we  
6 are good to go. Do you know what that is regarding?

7 A I believe that that's regarding the amendment  
8 to the Municipal Code which corrected the inconsistency  
9 and clarified that the zone which this project was  
10 located in did qualify for a conditional use permit for  
11 this use.

12 Q Okay. And that email is dated March 15, 2017?

13 A It appears to be.

14 MR. TOOTHACRE: Let me have you -- your Honor,  
15 I'd like to move Exhibit 80 into evidence.

16 THE COURT: Any objection?

17 MR. AUSTIN: No, your Honor.

18 THE COURT: Exhibit 80 will be admitted.

19 (Premarked Joint Exhibit 80, Email to Larry  
20 Geraci from Abhay Schweitzer Re: form needed,  
21 dated 3/22/17, was admitted into evidence.)

22 BY MR. TOOTHACRE:

23 Q This appears to be an email, Mr. Schweitzer,  
24 from you to Mr. Geraci, dated March 22nd, 2017. Is that  
25 correct? Call up the first paragraph.

26 A Yes.

27 Q And you indicate that the application was  
28 deemed complete by the City on March 13. Is that

1 correct?

2 A That's correct.

3 Q So it apparently took from October 31st, 2016  
4 to March 13, 2017 just to pass completeness review on  
5 this project. Correct?

6 A I believe that's correct, but I am not 100  
7 percent certain of what the City legally means by saying  
8 "deemed complete."

9 Q Deemed -- does deemed complete have a special  
10 meaning within the CUP process?

11 A It's not a milestone that we have to reach. I  
12 know that from my -- from my work with other consultants  
13 that it does have a legal implication, but I wouldn't be  
14 able to speak about that.

15 MR. TOOTHACRE: Okay. I would like to move 86  
16 into evidence, your Honor.

17 THE COURT: Any objection?

18 MR. AUSTIN: No, your Honor.

19 THE COURT: Exhibit 86 will be admitted.

20 (Premarked Joint Exhibit 86, Email from  
21 Tirandazi to Schweitzer dated 04/03/17, was  
22 admitted into evidence.)

23 BY MR. TOOTHACRE:

24 Q Mr. Schweitzer, is there a requirement of  
25 posting notice on the project?

26 A Yes.

27 Q And what is that requirement?

28 A It is part of a City requirement that the

1 public be notified when certain types of permits are  
2 applied for. And one of the ways that the public is  
3 notified is by posting a notice of that application  
4 along the property line of the project --

5 Q Okay.

6 A -- or of the proposed project site.

7 Q I'd like to focus on page 3, the first  
8 paragraph.

9 You indicate "Good morning, Firouzeh. We are  
10 working with the property owner on this project to get  
11 the notice posted, but we are not able to do it yet.  
12 Would it be possible to get an extension?"

13 Why were you unable to post on the property at  
14 that particular time?

15 A I was unable to post because I was informed by  
16 Gina Austin, I believe, that the owner of the property  
17 would not allow us to post.

18 Q And if you come forward to the second email  
19 page, does Firouzeh respond to you?

20 A She does. On page 2. She says "Per the  
21 SDMC" -- that's San Diego Municipal Code, "the notice of  
22 application is to be posted within five business days of  
23 receipt." And then she provides the section below that.

24 Q And did you then respond back to her on the  
25 first page of Exhibit 86?

26 A I did.

27 Q And what was your response?

28 A I thanked her for her fast response, and then I

1 asked her what happens if we can't post on time or if we  
2 can't post at all.

3 Q And she indicates it would be a violation of  
4 the Code. Correct?

5 A Yes. Yeah. She indicates it would be a  
6 violation of the Code. Those are her specific words,  
7 and then she provides the particular section of that  
8 code, San Diego Municipal Code that deals with error in  
9 posting.

10 Q Okay. And did you find a way around this  
11 posting issue, not being allowed to be on Mr. Cotton's  
12 property?

13 A I did.

14 Q And what did you do? If you can explain to the  
15 jury how you devised a way to get the posting on the  
16 property.

17 A Yes. Of course. Since we had a topographic  
18 survey which depicted very accurately and in detail most  
19 of the elements on the site, including the fences, we  
20 noticed that there was a portion of the front fence  
21 which was actually over the property line and on the  
22 City property. And that specific location is where I  
23 was able to personally post it, since it would be along  
24 the property line, without having to go on the private  
25 property at all.

26 MR. TOOTHACRE: Okay. Your Honor, I'd move  
27 Exhibit 88 into evidence.

28 THE COURT: Any objection?

1 MR. AUSTIN: No, your Honor.

2 THE COURT: Exhibit 88 will be admitted.

3 (Premarked Joint Exhibit 88, Picture of Posted  
4 Notice of Application on property fence of 6176  
5 Federal Blvd. with cell phone time screen shot,  
6 dated 94/94/2017 at 8:58 p.m., was admitted into  
7 evidence.)

8 BY MR. TOOTHACRE:

9 Q Do you have 88 in front of you, Mr. Schweitzer?

10 A I do.

11 Q What is Exhibit 88?

12 A I believe that this is the picture that I took  
13 after posting. I did want some proof that we had  
14 posted, that we had posted accurately. So along with  
15 the picture, which I took on my phone, I also took a  
16 screen shot of the metadata which shows the location and  
17 time which I made that posting.

18 Q Okay. And nobody interfered with you when you  
19 were posting?

20 A No.

21 MR. TOOTHACRE: Okay. I'd like to enter  
22 Exhibit 91, your Honor.

23 THE COURT: Any objection?

24 MR. AUSTIN: No, your Honor.

25 THE COURT: Exhibit 91 will be admitted.

26 \ \ \

27 \ \ \

28 \ \ \

1 (Premarked Joint Exhibit 91, City of San Diego  
2 Verification of Posting Public Notice signed by  
3 Firouzeh Tirandazi, dated 4/04/17, was admitted  
4 into evidence.)

5 BY MR. TOOTHACRE:

6 Q Have you seen Exhibit 91 before,  
7 Mr. Schweitzer?

8 A Yes.

9 Q And what is Exhibit 91?

10 A Exhibit 91 is a form that is prepared by the  
11 City. The purpose of this form is for the applicant to  
12 verify to the City that this particular notice has been  
13 posted. And this is a signed copy. And I signed this  
14 myself.

15 Q Okay. And so the notification requirements had  
16 been met, then, by that point?

17 A As they relate to this particular posting, as I  
18 understand there are other public notices that the City  
19 is responsible for. But this particular verification  
20 deals with the posting that you just saw a picture of.

21 MR. TOOTHACRE: Your Honor, I'd like to move 95  
22 into evidence.

23 THE COURT: Any objection?

24 MR. AUSTIN: No, your Honor.

25 THE COURT: Exhibit 95 will be admitted.

26 \ \ \

27 \ \ \

28 \ \ \

1 (Premarked Joint Exhibit 95, Email to Larry  
2 Geraci and Jim Bartell from Abhay Schweitzer  
3 Fwd: 520606 - Draft Cycle Issues, dated 5/10/17  
4 with attached Draft City of San Diego Cycle  
5 Issues, was admitted into evidence.)

6 BY MR. TOOTHACRE:

7 Q I'd like to call out the bottom email from  
8 Firouzeh to you on May 10th, 2017.

9 A Is this on page 1?

10 Q It is on page 1. Again, I'm going to ask  
11 you -- she says, "Hi, Abhay, here are the draft cycle  
12 issues for Federal Boulevard."

13 What are draft cycle issues?

14 A So draft cycle issues are the draft comments  
15 which the City staff prepares. Them being draft because  
16 they have not yet been finalized, or as I understand it,  
17 reviewed by the development project manager and formally  
18 issued to the applicant.

19 Q Okay. Is it unusual in your practice to  
20 receive draft cycle issues from the City?

21 A It's not unusual for our firm, and the reason  
22 why we request it is so we can get a head start on  
23 addressing the comments because sometimes it takes a  
24 while for the project to assemble all of the comments,  
25 to wait for every single reviewer to finish, to prepare  
26 their letter. And we like to move as quickly as we can.  
27 So almost for every single letter of this type, we  
28 request draft cycle issues when they're available.

1 Q And that's just so you can expedite your  
2 response --

3 A Yes.

4 Q -- back to the City?

5 Okay. Can we look at the top email, which  
6 appears to be your reply. And you indicate engineering  
7 is asking for an even bigger dedication. So I see no  
8 issues with that at all.

9 What was engineering asking for?

10 A I'd have to look at that comment.

11 Are you asking how much bigger that dedication  
12 was?

13 Q Yes. Just off the top of your head, generally.

14 A I can't locate it now. From recollection, it  
15 may have been as much as 10 feet. I recall it being  
16 significantly larger than what we had proposed.

17 Q Okay. And then you indicate in the next  
18 sentence that planning is asking you to redesign the  
19 building to bring it closer to the street.

20 Were you able to comply with that?

21 A Eventually, we were able to comply with that.

22 Q Okay. And you indicate in the last sentence  
23 that you haven't reviewed the draft cycle issues in  
24 detail but you think you can get both those issues  
25 approved?

26 A Yes.

27 Q And were you able to get those approved?

28 A Eventually, we were able to get those issues



1 cleared.

2 MR. TOOTHACRE: Okay. Let me have you -- let  
3 me move into evidence Exhibit 97, your Honor.

4 THE COURT: All right. Any objection?

5 MR. AUSTIN: No objection, your Honor.

6 THE COURT: Exhibit 97 will be admitted.

7 (Premarked Joint Exhibit 97, Email from Larry  
8 Geraci to Abhay Schweitzer, dated 05/15/2017,  
9 was admitted into evidence.)

10 BY MR. TOOTHACRE:

11 Q I'd like to focus on the bottom email first.

12 Have you seen that document, Mr. Schweitzer?

13 A Yes.

14 Q And this appears to be an email from Mr. Cotton  
15 to Firouzeh. Correct?

16 A It appears to be.

17 Q And he says that "Following up on our  
18 conversation on Friday, I appreciate that you  
19 procedurally cannot accept the updated ownership  
20 disclosure statement, reflecting Richard Martin for the  
21 CUP application on the property."

22 Did that have any meaning to you?

23 A Yes.

24 Q And what was the meaning to you?

25 A What --

26 Q Were you concerned with that statement?

27 A Yes.

28 Q And what was your concern?

1           A       My concern is that it appeared that Mr. Cotton  
2 was trying to switch who the owner was on the  
3 application.

4           Q       Okay. And did you do anything in response to  
5 that email? Let me refer you to the top part of the  
6 email.

7           A       I forwarded it to Larry.

8           Q       And what did you say to Larry in that first  
9 full sentence?

10          A       I said just saw this email from Firouzeh  
11 responding to an email from Darryl regarding trying to  
12 change the CUP applicant.

13          Q       Okay. And I skipped a reply by Firouzeh to  
14 Mr. Cotton in the middle section.

15                   What was her reply to Mr. Cotton?

16          A       What she said is you may have misunderstood me.  
17 If the property has changed ownership, feel free to  
18 provide an updated general application, ownership  
19 disclosure statement, and the new grant deed so that we  
20 may have the most updated information for the project  
21 file. If as a result of this there is a new financial  
22 responsible party, please provide a change of  
23 responsible party form.

24                   MR. TOOTHACRE: Let me move into evidence 98,  
25 your Honor.

26                   THE COURT: Any objection?

27                   MR. AUSTIN: No, your Honor.

28                   THE COURT: Exhibit 98 will be admitted.

1 (Premarked Joint Exhibit 98, Letter from City of  
2 SD to Abhay Schweitzer dated 05/19/2017, was  
3 admitted into evidence.)

4 BY MR. TOOTHACRE:

5 Q For the record, Exhibit 98 appears to be an  
6 exhibit dated May 19th to you, Mr. Schweitzer. Is that  
7 correct?

8 A Yes.

9 Q And on the first sentence of the third  
10 paragraph, starting there. There you go. What was the  
11 City telling you?

12 A What the development project manager was saying  
13 is that they had been informed that the property had  
14 been sold, and in order to continue processing, they  
15 would need a new grant deed, an updated ownership  
16 disclosure statement, and a change of financial  
17 responsible form if that financial responsible party  
18 also changed.

19 Q Were you surprised to learn that City staff had  
20 been informed that the property had been sold?

21 A I don't think at that time I was, since I had  
22 received a prior email from Firouzeh, if this is in  
23 chronological order.

24 Q Okay. And do you know who was representing to  
25 the City that the property had been sold?

26 A From the email that Firouzeh forwarded to me,  
27 it was Mr. Cotton.

28 Q Okay. And did you take any action in response

1 to receiving this letter?

2 A Yes.

3 Q What did you do?

4 A I replied to her.

5 Q And what was your reply?

6 A The reply was that nothing has changed.

7 Q Did you tell her the property hadn't been sold?

8 A I believe I did.

9 MR. TOOTHACRE: I will move into evidence  
10 No. 102, your Honor.

11 THE COURT: Any objection?

12 MR. AUSTIN: No, your Honor.

13 THE COURT: Exhibit 102 will be admitted.

14 (Premarked Joint Exhibit 102, Email from Ben  
15 Peterson to Abhay Schweitzer dated 07/10/2017  
16 re: Geotechnical Investigation proposal, was  
17 admitted into evidence.)

18 BY MR. TOOTHACRE:

19 Q Have you seen this document before,  
20 Mr. Schweitzer?

21 A Yes.

22 Q And what is this document?

23 A This is an email that Ben Peterson, who is an  
24 employee of my firm, forwarded to me with the proposal  
25 for the geotechnical investigation for this particular  
26 property.

27 Q And we discussed yesterday that a geotechnical  
28 soil evaluation was required by the City for this

1 property?

2 A Yes.

3 MR. TOOTHACRE: I'd like to move into evidence,  
4 your Honor, 104.

5 THE COURT: Any objection?

6 MR. AUSTIN: No, your Honor.

7 THE COURT: Exhibit 104 will be admitted.  
8 (Premarked Joint Exhibit 104, Email to Larry  
9 Geraci, Jim Bartell, and Gina Austin from Abhay  
10 Schweitzer Fwd: 6176 Federal Blvd: Zoning  
11 Distance Requirement, dated 7/17/17, was  
12 admitted into evidence.)

13 BY MR. TOOTHACRE:

14 Q This appears to be to Mr. Schweitzer in an  
15 email chain.

16 Have you seen this document before?

17 A Yes.

18 Q I believe it reads from page 2 back to the  
19 front. Can we call up the email on page 2. This  
20 appears to be an email to Firouzeh Tirandazi from Rodney  
21 Bruce.

22 Do you know who Rodney Bruce is?

23 A I don't know who Rodney Bruce is.

24 Q You indicate "I've been asked by the property  
25 owner of 6176 Federal Boulevard to review some of the  
26 major plan review comments to determine whether these  
27 issues can be cleared."

28 Did that concern you?

1 A Not necessarily.

2 Q Did Firouzeh forward this to you?

3 A It appears that she responded to Mr. Bruce and  
4 copied me.

5 Q Okay. What was her response?

6 A Her response basically indicated to Mr. Bruce  
7 that he had to coordinate his inquiries with the project  
8 point of contact, which in this case was myself.

9 Q Okay. Did you come to some understanding as to  
10 what Mr. Bruce was attempting to do on the project you  
11 were working on?

12 A Only by the content of his initial email.

13 Q Okay. Did you find it odd that someone was  
14 essentially looking over your shoulder on your project?

15 A It's unusual.

16 Q Do you know who hired Mr. Bruce?

17 A Well, in his email, he says the property owner  
18 for the property hired him.

19 Q And that would have been Mr. Cotton?

20 A Yes.

21 Q Okay. Let me refer -- or, your Honor, I'd like  
22 to move 105 into evidence.

23 THE COURT: Any objection?

24 MR. AUSTIN: No, your Honor.

25 THE COURT: Exhibit 105 will be admitted.

26 \ \ \

27 \ \ \

28 \ \ \

1           (Premarked Joint Exhibit 105, Email from Jim  
2           Bartell to Abhay Schweitzer dated 7/24/17 re:  
3           Geotechnical Investigation, was admitted into  
4           evidence.)

5 BY MR. TOOTHACRE:

6           **Q     I'd like to bring up the body of this. This**  
7           **appears to be, Mr. Schweitzer, an email from you to Jim**  
8           **Bartell, dated July 24, 2017.**

9                   **Were you having trouble at this time getting a**  
10           **geotechnical survey conducted?**

11           A     Yes.

12           **Q     And what was the problem with getting the**  
13           **geotechnical survey conducted?**

14           A     The problem was that I was informed that the  
15           property owner would not allow the engineers on site.

16           **Q     Okay. And you sent this email to Jim. Is that**  
17           **Jim Bartell?**

18           A     That's correct.

19           **Q     And you're asking for what from Mr. Bartell?**

20           A     What I asked from Jim is to schedule a meeting  
21           with Kreg Mills.

22           **Q     Who is Kreg Mills?**

23           A     Kreg Mills -- I don't know if he still is, but  
24           at the time, he was an employee with the City of  
25           San Diego. And he was the person responsible for the  
26           geology review. And he is also the one who followed up  
27           by asking for a geotechnical report.

28           **Q     Okay. So what were you asking -- I**

1 interrupted. What were you asking Mr. Bartell?

2 A What I was asking Jim to do, Mr. Bartell, is to  
3 meet with him and his supervisor, I believe, to see  
4 if -- there was a way to condition the project where we  
5 would provide that report at a later date.

6 Q Okay. And what was the response?

7 A I wasn't at that meeting myself, but what I was  
8 informed happened at that meeting is that they would  
9 consider a report from a nearby property if we could  
10 produce that. And they would evaluate it to see if it  
11 was adequate.

12 MR. TOOTHACRE: One second, your Honor, please.  
13 Let me have -- your Honor, I'd like to move 112 into  
14 evidence, please.

15 THE COURT: 112?

16 MR. TOOTHACRE: Yes.

17 THE COURT: Any objection?

18 MR. AUSTIN: No, your Honor.

19 THE COURT: Exhibit 112 will be admitted into  
20 evidence.

21 (Premarked Joint Exhibit 112, TECHNE Cycle  
22 Issues Responses, dated 09/11/2017, was admitted  
23 into evidence.)

24 BY MR. TOOTHACRE:

25 Q And what is Exhibit 112, Mr. Schweitzer?

26 A Exhibit 112 is a series of cycle issue  
27 responses similar to the one we covered earlier. But  
28 these addressing now the full review of the project and



1 addressed to each particular review discipline.

2 **Q And does 112 include a reference to a**  
3 **geotechnical report?**

4 A On page 3 of the exhibit?

5 **Q Yeah. What does that reference?**

6 A These are our responses to the reviewer. If  
7 you could please go to No. 2.

8 **Q Yes.**

9 A I apologize. From No. 2 -- all the numbers,  
10 please, if you could.

11 So on No. 2, we were, I believe, responding to  
12 his request for a report and following up from the  
13 meeting as well. So at that time, we researched the  
14 City records and also the City of Lemon Grove records  
15 since this property is very near the border. And we  
16 found, from what I recall, at least two reports which we  
17 submitted as agreed during the meeting which I had  
18 referenced before.

19 **Q So you were submitting geotechnical reports**  
20 **from nearby properties attempting to get around the**  
21 **issue of not being able to get on Mr. Cotton's property**  
22 **for the soils testing?**

23 A That's correct.

24 **Q And did those geotechnical reports from the**  
25 **nearby properties meet with the City's approval?**

26 A Unfortunately, they did not.

27 **Q And did they continue to request a site**  
28 **specific geotechnical report?**

1 A Yes.

2 Q Let me have you refer to Exhibit 108, please.

3 MR. TOOTHACRE: Move Exhibit 108 into evidence,  
4 your Honor.

5 THE COURT: Any objection?

6 MR. AUSTIN: No objection.

7 THE COURT: Exhibit 108 will be admitted.

8 (Premarked Joint Exhibit 108, Email from Abhay  
9 Schweitzer to Firouzeh Tirandazi dated  
10 08/15/2017 - 08/17/17, was admitted into  
11 evidence.)

12 BY MR. TOOTHACRE:

13 Q Do you recognize this particular email string  
14 between you and Firouzeh Tirandazi?

15 A Yes.

16 Q And was this Ms. Tirandazi's denial or refusal  
17 to consider the nearby geotechnical reports as meeting a  
18 condition the City was requiring?

19 A What --

20 Q I'll refer you to the middle of the page on  
21 page 1.

22 A What the response was after we submitted the  
23 addresses where we could find the reports to Mr. Mills  
24 asking if that would be close enough, as is often the  
25 case, City staff won't give a "yes" or "no" answer  
26 unless you go through a formal submittal process. We  
27 try. We want to move as quickly as we can.

28 And, in essence, what Kreg said is we'll

1 consider it once you submit it. Please coordinate with  
2 Firouzeh, who is the project manager, to get them  
3 submitted.

4 **Q Okay. And let me have you -- strike that?**

5 MR. TOOTHACRE: Your Honor, I'd move 110 into  
6 evidence, your Honor.

7 THE COURT: Any objection?

8 MR. AUSTIN: No, your Honor.

9 THE COURT: Exhibit 110 will be admitted.  
10 (Premarked Joint Exhibit 110, TECHNE Cycle  
11 Issues Responses, dated 09/07/2017, was admitted  
12 into evidence.)

13 BY MR. TOOTHACRE:

14 **Q Exhibit 110, Mr. Schweitzer, is entitled "cycle**  
15 **issue responses." Can you describe what this is just**  
16 **briefly.**

17 A These are another set of response letters which  
18 we prepared similar to the ones we discussed earlier.

19 **Q And what is the purpose of these responses?**

20 A The purpose is to assist City staff when we  
21 submit the revised project for them to find where on the  
22 documents and drawings we submitted that they can find  
23 the answers to the issues that they brought up.

24 MR. TOOTHACRE: Okay. I'd move 111 into  
25 evidence, your Honor.

26 THE COURT: Any objection?

27 MR. AUSTIN: No, your Honor.

28 THE COURT: Exhibit 111 will be admitted.

1 (Premarked Joint Exhibit 111, TECHNE Draft  
2 Findings for 6176 Federal Blvd., dated  
3 09/07/2017, was admitted into evidence.)

4 BY MR. TOOTHACRE:

5 Q Mr. Schweitzer, Exhibit 111 is entitled "Draft  
6 findings."

7 Was this prepared by your firm?

8 A Yes.

9 Q And what is the purpose of draft findings?

10 A This particular type of permit requires that  
11 specific findings be made in order for it to be  
12 approved. It's common for City staff to ask the  
13 applicant, and in this case, our firm representing the  
14 applicant, to prepare a draft of those findings  
15 explaining how and why the project would be able to meet  
16 all of the required findings. And that's what this is.

17 MR. TOOTHACRE: Okay. I move admission of 113,  
18 your Honor.

19 THE COURT: Any objection?

20 MR. AUSTIN: No, your Honor.

21 THE COURT: Exhibit 113 will be admitted.

22 (Premarked Joint Exhibit 113, Email to Larry  
23 Geraci, Rebecca Berry, Gina Austin, Michael  
24 Weinstein, and Jim Bartell from Abhay Schweitzer  
25 re Federal Blvd. - Resubmitted, dated 9/6/17,  
26 was admitted into evidence.)

27 BY MR. TOOTHACRE:

28 Q Do you recognize Exhibit 113, Mr. Schweitzer?

1 A Yes.

2 Q That's dated September 16, 2017?

3 A Yes.

4 Q And in that email, you're indicating to  
5 Mr. Geraci and Gina Austin, Mr. Weinstein, and Jim  
6 Bartell that "On Wednesday of this week, we successfully  
7 resubmitted your project to the City of San Diego."

8 Was it just an update you were sending?

9 A Yes. We also sent it to Becky Berry.

10 Q Okay. And you indicate you expect to receive  
11 comments from the City in two to three weeks?

12 A Yes.

13 Q Do you recall whether or not you received the  
14 comments from the City in two to three weeks?

15 A I don't recall offhand.

16 Q Do you recall how many submittals you did,  
17 cycle reviews, for the City in this project?

18 A Full submittals?

19 Q Yes.

20 A Three to four.

21 Q Did you spend considerable time on this  
22 project?

23 A Yes.

24 Q Do you have a -- well, do you know how much  
25 time you and your firm spent on this project?

26 A As of last week, it was approximately 680  
27 hours.

28 MR. TOOTHACRE: Okay. Let me have you refer to

1 Exhibit 124, please.

2 THE WITNESS: Did you say 124?

3 MR. TOOTHACRE: Yes.

4 Your Honor, I'd like to move 124 into evidence.

5 THE COURT: Any objection?

6 MR. AUSTIN: No, your Honor.

7 THE COURT: Exhibit 124 will be admitted.

8 (Premarked Joint Exhibit 124, SCST Geotechnical  
9 Investigation Reported dated 06/08/2018, was  
10 admitted into evidence.)

11 BY MR. TOOTHACRE:

12 Q Do you recognize that document?

13 A I do.

14 Q And what is this document?

15 A This is the geotechnical report which was  
16 ultimately prepared for that specific site by Southern  
17 California Soils and Testing.

18 Q Okay. So apparently the soils testing company  
19 was eventually let onto Mr. Cotton's property. Is that  
20 correct?

21 A Yes.

22 Q Do you understand that Mr. Geraci had to resort  
23 to the Court to obtain permission -- or court order for  
24 Mr. Cotton to allow the soils testing engineers on the  
25 property?

26 A I do.

27 Q And even after receipt of that court order, are  
28 you aware of whether or not Mr. Geraci (sic) refused to

1 sign the document permitting the soils engineers on the  
2 property?

3 A What I was told, then, I believe is that  
4 Mr. Cotton refused to sign that.

5 Q Okay. And so are you aware of whether or not  
6 Mr. Geraci had to resort to the Court again to have the  
7 clerk of the court sign that document in Mr. Cotton's  
8 stead?

9 A That's what I was informed. And I believe  
10 that.

11 Q So this particular report is dated June 8th,  
12 2018. Do you know when the soils engineers were finally  
13 allowed to be on the property?

14 A I don't remember the specific date, but  
15 usually, the reports take two to four weeks. So I  
16 assumed within that period of this date.

17 Q The soils engineers gave you their proposal  
18 back on July 10, 2017. Is that correct? We looked at  
19 that yesterday.

20 A Yes.

21 Q So nearly a year has gone by, nine months has  
22 gone by between their proposal, between being allowed on  
23 the property and to finalize a report?

24 A Yes. I think it was 11 months approximately.

25 Q And did this report satisfy the requirement for  
26 the City, then?

27 A Yes.

28 MR. TOOTHACRE: Your Honor, I'd move 125 into

1 evidence.

2 THE COURT: Any objection?

3 MR. AUSTIN: No, your Honor.

4 THE COURT: Exhibit 125 will be admitted.

5 (Premarked Joint Exhibit 125, TECHNE Draft  
6 Findings for 6176 Federal Blvd., dated  
7 06/11/2018, was admitted into evidence.)

8 BY MR. TOOTHACRE:

9 Q Mr. Schweitzer, have you seen Exhibit 125  
10 before?

11 A Yes.

12 Q And what is Exhibit 125?

13 A This, I believe, is another iteration of the  
14 draft findings that I spoke of earlier.

15 Q Okay. And can you -- I'm not going to offer it  
16 into evidence. But can you look at 126, please.

17 (Premarked Joint Exhibit 126, TECHNE Cycle  
18 Issues Responses: LDR - Geology dated  
19 06/12/2018, was identified.)

20 BY MR. TOOTHACRE:

21 Q Is that another iteration of cycle responses?

22 THE WITNESS: Yes. Specifically to the geology  
23 reviewer.

24 Q Let me just ask you to go -- let me ask you:  
25 How many iterations of the cycle issue responses were  
26 there in this submittal? You can just go through the  
27 rest of that book and count them.

28 A It appears at eight.



1           **Q     I'm going to refer you --**

2           MR. TOOTHACRE:  Actually, your Honor, I'm going  
3 to move into evidence 136, which is a different book,  
4 Mr. Schweitzer.

5           THE COURT:  The number is 146?

6           MR. TOOTHACRE:  Thirty-six, your Honor.

7           THE COURT:  136.

8           Any objection?

9           MR. AUSTIN:  No, your Honor.

10          THE COURT:  Exhibit 136 will be admitted into  
11 evidence.

12          (Premarked Joint Exhibit 136, CUP Submittal  
13 Plans - CUP Submittal 3 dated 06/18/2018, was  
14 admitted into evidence.)

15          BY MR. TOOTHACRE:

16          **Q     What is Exhibit 136, Mr. Schweitzer?  Is this a**  
17 **final full submittal?**

18          A     136?

19          **Q     I am on 136.**

20          A     I apologize.  I'm in the wrong exhibit.  Give  
21 me one moment.

22          This is what I believe a full resubmittal for  
23 this project, the drawings for that resubmittal.

24          **Q     Okay.  And what is the date on that, if you**  
25 **look in the right-hand corner ledger?  I forget what you**  
26 **call that.**

27          A     Yes.  If you go -- right there.  Perfect.

28          Could you zoom into the top third of that,

1 please.

2 If you see Item No. 4, dated 6/18/18, CUP  
3 Submittal 3, that's what these drawings are, I believe.

4 Q Okay. So each of those dates represents a  
5 submittal except for the first one, which is the  
6 completeness review?

7 A Yes. The completeness review is also a type of  
8 submittal. And then following that, we have three full  
9 submittals.

10 Q Okay. And just so we have a timeline, you did  
11 a completeness review on October 28, 2016. Correct?

12 A Yes.

13 Q And CUP Submittal 1 on February 22, 2017.  
14 Correct?

15 A Yes.

16 Q And Submittal 3 on September 11, 2017?

17 A Yes.

18 Q Actually, that's CUP Submittal 2?

19 A 2. Right.

20 Q And then CUP Submittal 3 was on June 18, 2018.  
21 Correct?

22 A Correct.

23 Q Now, do you recall whether or not there was any  
24 further submittals on this project by TECHNE?

25 A I don't think there was, but I'm not 100  
26 percent sure.

27 Q Okay. I'm going to change topics here for a  
28 second, Mr. Schweitzer, and talk about the competing --

1 what's been referred to as the competing CUP.

2 Was there a competing CUP in progress at the  
3 same time Mr. Geraci's project was in process?

4 A For a portion of that time, yes.

5 Q And was that competing CUP located at 6220  
6 Federal Boulevard?

7 A I believe that's the address, yes.

8 Q Okay. And do you know who was the applicant on  
9 that CUP?

10 A We were informed that the applicant was Aaron  
11 Magagna.

12 Q Okay. Had you met Aaron Magagna prior to his  
13 submitting his CUP on 6220?

14 A No.

15 Q Do you know Mr. Magagna now?

16 A I do know him now.

17 Q How did you come to know him in the interim?

18 A I was introduced to him from another client and  
19 friend who is also in the cannabis industry.

20 Q And when did you first learn to the best of  
21 your recollection that Mr. Magagna had filed for a  
22 competing CUP?

23 A It was sometime in 2018. I think the first  
24 half of the year. But I don't remember with any more  
25 certainty than that.

26 Q Okay. Did you have concern that that CUP had  
27 been filed?

28 A Initially, we didn't have a concern because we

1 know how long from our history it takes for these to get  
2 approved. And my initial feeling was there was no way  
3 that they would catch up or pass us.

4 Q Did you make a request to the City planning  
5 group or planning commission that you obtain a copy of  
6 the plans on 6220?

7 A We did not request it from the planning  
8 commission, but we did request the plans for that  
9 project multiple times.

10 Q And did you finally obtain plans?

11 A Finally, we did.

12 Q Okay. And do you recall when that was?

13 A I don't recall exactly when that was.

14 Q Okay. Did you do any work on behalf of the  
15 competing CUP for Mr. Magagna?

16 A No.

17 Q Did TECHNE do any work on the competing CUP for  
18 Mr. Magagna?

19 A No.

20 Q Let me back up one -- strike that.

21 Did the competing CUP beat Mr. Geraci's CUP  
22 application to the finish line?

23 A Ultimately, it did.

24 Q Okay. Let me back up one second.

25 Back to the soils testing, was there any effort  
26 on behalf of Mr. Geraci's team to sabotage the soils  
27 testing?

28 A Not that I'm aware of.

1           Q     Can you imagine what such a scenario would be,  
2     what would sabotage a soils testing?

3           A     Not being able to test the soil would sabotage  
4     it.

5           Q     Do you believe if you had access to  
6     Mr. Cotton's property for the soils testing when you  
7     first attempted that your CUP would have beat 6220 to  
8     the finish line?

9           A     The process is unpredictable, but from my  
10    evaluation, I think our chances would have been very  
11    high.

12          Q     Was there any other interference by Mr. Cotton  
13    that you believe delayed your particular effort to get  
14    the CUP to the finish line?

15          A     I can't say for certain, but it was obvious  
16    from the communications we were receiving that he was  
17    attempting to interfere at the City. And I do believe  
18    that that caused a delay.

19          Q     Did you appeal the approval of 6220?

20          A     Yes. So that project was first approved at the  
21    hearing officer, who is the first decision-maker, and on  
22    behalf of my client and the applicant for 6176. I did  
23    appeal that decision.

24               MR. TOOTHACRE: Okay. Your Honor, I would like  
25    to move into evidence Exhibit 149, please.

26               THE COURT: Any objection?

27               MR. AUSTIN: No, your Honor.

28               THE COURT: Exhibit 149 will be admitted.

1 (Premarked Joint Exhibit 149, TECHNE Appeal of  
2 Project 598124, was admitted into evidence.)

3 BY MR. TOOTHACRE:

4 Q Do you recognize that document, Mr. Schweitzer?

5 A Yes, I do.

6 Q And what is that document?

7 A Subsequent to filing the appeal, which is done  
8 on a standard City form, we, as in myself and my firm,  
9 we did a comprehensive review of the competing project,  
10 the information we could get, which were the drawings,  
11 in order to find out the extent of issues that we had  
12 already tentatively identified. And as a result of  
13 that, we prepared a very comprehensive supplemental  
14 information package, which we submitted to the planning  
15 commission, which was the body to hear the appeal in  
16 order to substantiate the claims which we were making  
17 and to ask them to, because of all these errors and  
18 omissions and everything we identified in this pretty  
19 lengthy document, that they shouldn't approve that  
20 project, they should deny it.

21 Q Okay. And how many issues generally did you  
22 find problems with regard to the 6220 application? If  
23 you could just quickly just highlight a couple of them  
24 for the jury. I know it's a 32-page document, but I'd  
25 just like you to highlight a few of them.

26 A Yes. Give me just a moment.

27 Q Sure.

28 A If you would go to page 2 of the exhibit,

1 please, and highlight Section A.

2 So one set of issues which seem to be  
3 consistent through the plans which we identified, based  
4 on the project submittal manual -- if you recall, we  
5 went over that earlier -- is that there were a lot of  
6 basic information that the City stipulates must be on  
7 the plans that just were not on these plans at all. And  
8 we went over in quite detailed fashion specifically what  
9 each of those items were, the significance of that being  
10 that the Municipal Code states that the decision on a  
11 project must be made on the information provided on the  
12 plans, not in any oral information or anything else. It  
13 has to be based on what we -- what was submitted.

14 And we determined quite clearly, because of the  
15 host of specific items that the City requires that were  
16 not there and that are important, that that finding  
17 simply couldn't be made.

18 **Q And did you point out each of those items in**  
19 **this document to the City?**

20 A Yes.

21 **Q Can you just hit two or three of the**  
22 **significant ones.**

23 A If you would go to page 5, please, of the  
24 exhibit, if you could highlight Section 2. The  
25 Municipal Code -- the submittal manual, which is part of  
26 the Municipal Code, clearly states for this sort of  
27 project, which was a proposed new building as well, that  
28 a site section is required. We cite specifically that

1 it is required. We further cite the section that states  
2 it is required. And then we go into the details that  
3 would have to be provided in that drawing, which were  
4 obviously not provided as well, such as the grade, soil  
5 elevations, building height.

6 If you would go to Section 3, please, right  
7 below that. This is another example of information  
8 that's missing. On the elevation, this section, we  
9 claim that the existing and proposed grades are missing.  
10 The grade being the existing topography, how the land,  
11 where it meets the building, what does that look like.

12 Furthermore, finish floor elevations, which are  
13 required, are also not provided. And this is a snapshot  
14 of the actual drawing so we could point out specifically  
15 where that information was missing.

16 **Q If you could show one more major.**

17 A Certainly. If you could go to page 7, please.  
18 If you could zoom into section -- from section -- start  
19 at Section B to the bottom of that page.

20 **Q Section B?**

21 A Yes. All the way to the bottom of the page,  
22 please.

23 Through the numerous projects which we've  
24 processed through DSD, which is Development Services  
25 Department, specifically cannabis and marijuana-related  
26 projects, they tend to scrutinize the drawings. And  
27 they would not allow even the most minor inconsistency,  
28 and oftentimes even spelling mistakes. This is the



1 level of care that we were accustomed to and that we  
2 believe they applied to all the projects. But in this  
3 particular project, if you see here, the title of the  
4 section is "Conflicting or Grossly Misrepresented  
5 Information." Here, I give an overview. And then here  
6 I detail specifically what's missing and what's  
7 conflicting.

8 I'll point out this one. The parking, which is  
9 crucial for these projects, was depicted on two separate  
10 sheets as a different number of parking spaces. So it  
11 would be very difficult for somebody to understand how  
12 many spaces they were trying to propose. And that is  
13 relevant in making the findings to approve that project.

14 **Q Okay. And how many total issues did you take**  
15 **with the 6220 project? Your best estimate.**

16 A Twenty to 30 to be -- 20 to 30 specific issues  
17 at least.

18 **Q Okay. And did you argue that before the**  
19 **commission?**

20 A I did.

21 **Q And what was the result of the appeal?**

22 A After a lot of back and forth and me making the  
23 case as best as I could orally in front of the  
24 Commission, ultimately, there wasn't -- there weren't  
25 enough votes to uphold the appeal and thus deny the  
26 project. And they ultimately did approve that project.

27 **Q Okay. And what did the approval of that**  
28 **project mean for Mr. Geraci's project?**

1           A     Once that project is approved and, in this  
2 case, at the final instance, there are no other appeals  
3 that can be filed, it is then considered an approved  
4 MMCC and no other MMCCs could be located within  
5 1,000 feet of it. And since the project we were working  
6 on was within a thousand feet of that now just approved  
7 project, it would automatically mean that there would be  
8 almost no way for us to proceed forward because the  
9 Municipal Code wouldn't allow that. We wouldn't be able  
10 to meet the separation requirements.

11           Q     Okay. And how did you feel about that?

12           A     I felt horrible, to be honest. We don't like  
13 to lose. We fight hard on every single project. And,  
14 yeah, it wasn't pleasant.

15           MR. TOOTHACRE: Okay. Let me move 147 into  
16 evidence, your Honor.

17           THE COURT: Any objection?

18           MR. AUSTIN: No objection.

19           THE COURT: Exhibit 147 will be admitted.

20           (Premarked Joint Exhibit 147, TECHNE Expense  
21 Summary with Supporting Documentation, was  
22 admitted into evidence.)

23 BY MR. TOOTHACRE:

24           Q     Do you have 147 in front of you?

25           A     I do.

26           Q     And what is 147? Go ahead and pull it up.

27           A     I believe that 147 is a tabulation of the  
28 invoices which we issued and the payments which we

1 received.

2 Q On Mr. Geraci's project?

3 A On Mr. Geraci's project, correct.

4 Q So the total Mr. Geraci paid TECHNE for all  
5 their efforts in this project is \$86,631.75?

6 A I believe that's correct.

7 Q Do you believe that without Mr. Geraci's (sic)  
8 interference, you would have beat 6222 to the finish  
9 line?

10 A I think you mean Mr. Cotton.

11 Q I'm sorry. I knew I was going to do it once.  
12 I do mean Mr. Cotton.

13 A I think our chances would have been  
14 significantly better, and I think it would be very  
15 likely that we would have got that approved first.

16 MR. TOOTHACRE: Thank you, Mr. Schweitzer.  
17 Nothing further, your Honor.

18 THE COURT: Cross-examination.

19 MR. AUSTIN: Yes, your Honor.

20 MR. WEINSTEIN: Your Honor, before we proceed  
21 to cross-examination, could I just have the bailiff --  
22 the next witness is probably in the hall and probably  
23 needs to be updated.

24 THE COURT: You can go out there and talk to  
25 him or her. Thank you very much.

26 Cross-examination.

27 \ \ \

28 \ \ \

1 (Cross-examination of Abhay Schweitzer)

2 BY MR. AUSTIN:

3 Q Good morning, Mr. Schweitzer.

4 A Good morning.

5 Q It seems you worked very diligently for several  
6 months to -- from 2016 to 2017. You must have been  
7 pretty disappointed when that project didn't go through,  
8 huh?

9 A It was very disappointing.

10 Q Yeah. So the original TECHNE contract that you  
11 entered into, was that with Mr. Geraci, or Ms. Berry?

12 A It was with Ms. Berry.

13 Q So there wasn't two contracts: One with  
14 Mr. Geraci's name and then your request to take it off  
15 and put Ms. Berry's name on there?

16 A There was only one signed contract.

17 Q There was only one signed contract, but was  
18 there another draft?

19 A I don't recall there being another draft.

20 Q Okay. Was it your understanding that Ms. Berry  
21 would be in control of the project as the listed owner?

22 A My understanding is that she would be  
23 Mr. Geraci's agent.

24 Q And is that the standard practice in the  
25 marijuana industry?

26 A I wouldn't characterize it as standard, but  
27 it's not unusual.

28 Q At any point in the 6176 DSD CUP application

1 process, did Rebecca Berry ever make any decisions?

2 MR. TOOTHACRE: Calls for speculation.

3 THE COURT: Sustained.

4 BY MR. AUSTIN:

5 Q Did Rebecca Berry ever tell you how she wanted  
6 this processed, or was she a point of contact for you?

7 A She was a point of contact. We routinely sent  
8 emails to her.

9 Q But was she a part of the decision-making  
10 process, in your estimation?

11 A It appeared to me that she was involved, since  
12 we were sending her correspondences and sometimes they  
13 would reply to those.

14 Q Were those any -- was the correspondence  
15 related to any big issues?

16 A Can you be specific --

17 MR. TOOTHACRE: Yeah.

18 THE WITNESS: -- on what you mean by "big  
19 issues"?

20 BY MR. AUSTIN:

21 Q I'll just move on.

22 Had you ever met Darryl Cotton?

23 A I don't believe I had met him until seeing him  
24 here in the courtroom.

25 Q But you did know he was the owner of the  
26 property?

27 A That's what I was told, and I believe that the  
28 grant deeds we received did reflect that. So I did

1 believe that.

2 Q Was he ever made a part of any of the  
3 decision-making process?

4 A Not that I'm aware of.

5 Q What is your understanding of the nature of  
6 Mr. Cotton's role in the CUP process?

7 A He was the property owner.

8 Q Were you ever informed that he might have a  
9 decision-making power?

10 A I don't recall ever being informed of that.

11 Q So from July 2016 to March 2017, you never sat  
12 in on any discussions with Mr. Geraci and Mr. Cotton?

13 A I don't believe so.

14 Q So were you ever shown any email conversations  
15 or text messages between Mr. Geraci and Mr. Cotton  
16 during that time period?

17 A What time period?

18 Q October 2016 to March '17.

19 A I don't recall being shown any in that period.

20 Q So you're not aware of any discussions or  
21 conversations that Mr. Geraci and Mr. Cotton had  
22 regarding the future of the property?

23 A The extent of my exposure to Mr. Cotton was  
24 through having him sign forms, and there may have been  
25 an email forwarded during that time. But I don't recall  
26 interacting directly with Mr. Cotton or directly with  
27 Mr. Geraci and Mr. Cotton at the same time.

28 Q To your knowledge, was anyone on your team

1 keeping Mr. Cotton updated, including Mr. Geraci?

2 A Mr. Geraci is not on our team, but we had no  
3 instructions to keep Mr. Cotton updated. Neither did I  
4 provide any instructions to my team to do so.

5 Q So from your testimony and the testimony of  
6 another member of your team, Attorney Gina Austin,  
7 yesterday, it seems the 6176 CUP failed because of the  
8 competing 6220 Federal Boulevard CUP. Is that correct?

9 A I wasn't here during her testimony.

10 Q If it weren't for the 6220 Federal Boulevard  
11 CUP, do you believe the 6176 CUP would have been  
12 approved?

13 A Yes, I do.

14 Q And is that because they're within 1,000 feet  
15 of each other. The failure of 6176, is that because of  
16 the proximity to 6220?

17 A Are you asking that the reason it ultimately  
18 wasn't approved is because the other project at 6220 was  
19 approved?

20 Q Because it was within a 1,000-foot radius.  
21 Correct?

22 A Yes. Like I testified earlier.

23 Q And part of -- one of the main reasons you  
24 cited as to 6176 was delayed was because of this  
25 geotechnical investigation. Correct?

26 A It had a significant effect in my opinion.

27 Q Yes. When did you first know that the  
28 geotechnical investigation was necessary?

1           A       I believe when we received the comments for the  
2       completeness review, they were already asking for it.

3           **Q       And when was the completeness review submitted?**

4           A       I'm going off my memory, but I think 10/31/16.

5           **Q       Okay.**

6           A       To the best of my recollection.

7           **Q       Yeah, that sounds right.**

8                   **So October 2016, you knew of the soils testing.**

9                   **So why -- why didn't you try to do it much**  
10       **sooner?**

11          A       Try to do what?

12          **Q       Why didn't you try to have the geotechnical**  
13       **investigations completed months earlier?**

14          A       We tried to address that requirement right away  
15       with the City. We submitted a report for another  
16       property. They deemed it was inadequate. We followed  
17       up by meeting with Mr. Kreg Mills to get more specifics  
18       on an alternate report that may be accepted. We then  
19       procured those reports. We submitted them to Mr. Mills.  
20       Ultimately, he rejected them. And then at that point,  
21       we proceeded to, from my recollection, to try to attempt  
22       to have the engineers do a report specific for that  
23       property.

24          **Q       Approximately what was the time you were**  
25       **communicating with Mr. Mills?**

26          A       I'm sorry?

27          **Q       Approximately what was the date you were**  
28       **communicating with Mr. Mills?**



1 A I'd have to refer back to the exhibit.

2 Q So you've -- you've completed 20 or 30

3 marijuana CUPs. Correct?

4 A We have worked on a number of marijuana-related  
5 CUPs. Many of them approved. Some of them not. But  
6 that number, I think, is a reasonable approximation.

7 Q All right. And for this -- for the particular  
8 type of CUP you were pursuing for Mr. Geraci, has there  
9 ever been a time when a geotechnical survey was not  
10 required?

11 A For most CUPs, a geotechnical investigation is  
12 not required.

13 Q But for the particular type Mr. Geraci was  
14 pursuing, you knew that the soils testing would be  
15 required. Correct?

16 A I'm not sure what you mean by "particular  
17 type."

18 Q Well, at the time, it was the MMCC, now a  
19 marijuana outlet, a retail facility for -- for sales of  
20 marijuana.

21 A Typically, for MMCCs, a geotechnical report was  
22 not required. It was unusual, but we did become aware  
23 of it.

24 Q In October of 2016?

25 A I would have to refer to the exhibit to give  
26 you a precise date.

27 Q That's what you said earlier when you submitted  
28 the completion report.

1           A        If that's what it reflects, then that's  
2 correct.

3           **Q        So other than the soils testing, there could**  
4 **have been other things that would disqualify the CUP**  
5 **from being approved, such as schools, parks, childcare**  
6 **facilities within a thousand feet. Correct?**

7           A        So for a CUP, there are a set of conditions or  
8 findings that need to be made. I've touched on some of  
9 them earlier. One of them is that it must be -- it must  
10 have separation from specific uses, schools being one of  
11 them. There's a host of other ones as well.

12          **Q        All right. So schools, what about childcare**  
13 **facilities?**

14          A        The City has a particular definition of that,  
15 but from recollection, I do think that's correct, if a  
16 childcare facility meets the City's definition of it and  
17 it's within the stipulated minimum distance, then, yes,  
18 that project would not be able to be approved.

19          **Q        So when you were processing the 6176 CUP, you**  
20 **did check for all of those things, schools, childcare**  
21 **facilities, et cetera. Right?**

22          A        For that particular scope of the work, we  
23 contracted -- not ourselves, but the client did. We  
24 facilitated it -- with an outside consultant called  
25 Title Pro. We use them for almost all of our  
26 cannabis-related projects. They do that research on  
27 what's nearby, what the distances are. They prepare the  
28 maps depicting it graphically. And we subsequently take

1 that information and submit it to the City for review.  
2 So, no, I did not do that personally, but we did hire a  
3 consultant to do that.

4 Q So **TECHNE** did check?

5 A I'm sorry?

6 Q So your company, **TECHNE**, did make sure that was  
7 checked?

8 A No. We hired somebody to do that, and we did  
9 trust that their work was correct. If that's what you  
10 characterize as checked, yes. I just want to be  
11 accurate on the record.

12 Q Yes. Thank you.

13 So you testified that you attended the public  
14 hearing on October 18, 2018, regarding the appeal of the  
15 6220 CUP. Correct?

16 A If you're referring to the planning commission  
17 hearing and that date is accurate, yes, I absolutely did  
18 attend that.

19 Q And you said in your document you brought up 20  
20 or 30 issues that were problematic with that property?

21 A With that application.

22 Q With that application, yes.

23 So how long did you speak orally before that  
24 commission?

25 A Usually, they provide three minutes per  
26 speaker. What we typically do is we have other people  
27 on the team that can seed the time to whoever is  
28 speaking. And in that case, it was me. And I

1 approximate -- approximate it was somewhere between six  
2 and 12 minutes that I gave my initial argument. I may  
3 have replied to questions after that, but as best I can  
4 recall, that's the time that was allotted to me. And I  
5 think I used most of it.

6 Q So if someone was in attendance at that  
7 commission hearing and they testified you only spoke for  
8 one or two minutes, would that person be lying?

9 A I don't have the video of that commission. It  
10 would be unusual that I could go through the information  
11 that I provided in just one or two minutes. I can't  
12 speak to that person's credibility, but typically, I  
13 know how long it takes to go through a presentation.  
14 And it seems that one or two minutes would be  
15 inadequate.

16 Q Okay. So in your estimation, 6220 was missing  
17 several things like grading and elevation issues. If --  
18 if 6176 was missing those issues, would you anticipate  
19 that project be approved, assuming 6220 never existed?

20 A Could you repeat that.

21 Q Yes. Assuming 6220 never existed and your 6176  
22 project had problems with grading and elevation issues  
23 and parking and the other list you went through, would  
24 you anticipate your CUP would be approved?

25 MR. TOOTHACRE: Incomplete hypothetical, your  
26 Honor. Vague and ambiguous.

27 THE COURT: Overruled.

28 THE WITNESS: I think what you're asking -- and

1 please clarify me if I misrepresent it -- is if our  
2 project had the shortcomings and the errors that we  
3 identified in the other project's drawings, would it  
4 have ultimately been approved?

5 BY MR. AUSTIN:

6 Q Yes.

7 A Is that correct?

8 Q Yes. That's the question.

9 A I think that those issues would have been  
10 brought up before it went to hearing, and we would have  
11 addressed them as we usually do. But I don't recall us,  
12 as in my firm, ever having a project with drawings of  
13 that poor quality going to hearing.

14 Q So perhaps some of those issues are more  
15 discretionary?

16 A I don't know what you mean by that.

17 Q Perhaps some of the quality issues might be  
18 considered more discretionary by the Department of  
19 Development Services?

20 A We know that the staff who reviews the project  
21 does have some discretion. And they did argue during  
22 the hearing that they felt the drawings were complete.  
23 We absolutely disagreed with them. We were quite  
24 specific. But from my recollection, that is the  
25 position that they took.

26 Q Okay. But if they knew that the property was  
27 within a thousand feet of, say, a school or a childcare  
28 facility, that would probably be a complete bar.

1 Correct?

2 A Which property, and who is they?

3 Q To the -- any one of those CUPs, either 6176 or  
4 6220, would DSD have an issue if that property was  
5 within a thousand feet of a school or a daycare  
6 facility?

7 A I can only speak from experience, and I can't  
8 speak on behalf of the City. I want to make that very  
9 clear.

10 It's been our experience that if a use that  
11 must meet a certain separation is identified and the  
12 City staff agrees with that interpretation, that they  
13 would not support approval of that project.

14 Q Thank you.

15 Are you aware that the 6220 CUP was within a  
16 1,000-foot radius of not one but two childcare  
17 facilities?

18 A It's our understanding -- and this was brought  
19 up against their project -- it was brought up at the  
20 hearing, I recall. There was an allegation made that  
21 these were daycare facilities that were within -- within  
22 the minimum distance of both facilities. But from what  
23 I recall, City staff determined that those particular,  
24 what somebody called daycare, did not meet their  
25 criteria.

26 Q Did you have your independent contractor do a  
27 radius check for daycare facilities on the 6220  
28 property?

1 A I don't recall asking for that.

2 Q Okay. So if somebody came in and made this  
3 allegation, did you feel it would have been important  
4 for you to double-check whether or not there was a  
5 childcare facility within a thousand feet of 6220?

6 A I think we did double-check that. And,  
7 obviously, our consultant looked at it at the time that  
8 we submitted. We then determined that those met the  
9 requirement.

10 Q Okay. So that wouldn't have been a worthy  
11 argument at the commission hearing for you to make?

12 A I don't know what you mean by -- by "worthy."  
13 It's possible that I may make an argument like that. I  
14 definitely believe that it did not affect our project.

15 Q Okay. Does TECHNE employ a man named Carlos  
16 Gonzales?

17 A Yes.

18 Q So he works for you?

19 A Carlos is an employee of my firm, yes.

20 Q Yes. Are you aware that the San Diego  
21 Department of Development Services website had Carlos  
22 Gonzales listed as someone working for or on the project  
23 6220?

24 MR. TOOTHACRE: Assumes facts, your Honor.

25 THE COURT: Sustained.

26 BY MR. AUSTIN:

27 Q Are you -- on the San Diego Development  
28 Services website, do they contain -- does that website

1 contain information on CUPs that are being processed?

2 A That's a very broad question. And, certainly,  
3 we don't manage or publish that website. From our  
4 experience in DSD, Development Services Department, you  
5 can obtain some information on projects that the City  
6 chooses to place on that website.

7 Q Yes. So usually it's basic like information,  
8 like we did see an exhibit earlier that had certain  
9 pieces of information, just like very broad, like owner,  
10 point of contact, things of that nature. Like, what  
11 would you describe as some of the information that  
12 website would show the public?

13 A The website is quite broad, as you may imagine.  
14 There is a portion of it where you can search for  
15 projects. You can get access to invoices if you have  
16 the right information to search for them. You can get  
17 access oftentimes to a description of the project. They  
18 may identify, if they choose to do it, a point of  
19 contact or the property owner or the agent or anybody  
20 else who may have inquired about that project. And  
21 sometimes too they give a status, often incorrect, I may  
22 say from experience, on where the project is in each  
23 particular review discipline.

24 THE COURT: Counsel, we're going to take our  
25 morning break at this time. We're going to be in recess  
26 for 15 minutes.

27 Do not form or express an opinion or discuss  
28 the case until deliberations. We'll be in recess for 15



1 minutes.

2 All right. The jury has left the courtroom.

3 Feel free to sit down, Mr. Schweitzer.

4 THE WITNESS: Thank you.

5 THE COURT: We'll be in recess, Counsel.

6 (Recess from 10:28 a.m. to 10:50 a.m.)

7 THE COURT: The Court indicated that we were  
8 going to take a 15-minute recess, and now we're 20  
9 minutes plus. And this is not the first time you've  
10 been late. And this time, we made the jury wait. I  
11 don't understand why 15 minutes to everybody else means  
12 20 minutes or more to you.

13 MR. AUSTIN: I should have set a timer. I  
14 apologize, your Honor.

15 THE COURT: All right. Now, folks, we're all  
16 adults. I try to treat everybody like adults. So I'm  
17 not so sure you want me, if you're inviting the Court to  
18 treat you differently, because you are behaving  
19 differently than everybody else.

20 So, Counsel, no more times to be late. And,  
21 again, my primary audience is the jury, which you all,  
22 right now, you're examining this witness, I would think  
23 would want to be focused on.

24 Madam Deputy, bring the jury in.

25 THE BAILIFF: Yes, your Honor.

26 THE COURT: All right. Folks, thanks for being  
27 so patient. Everybody is in their chairs.

28 Counsel, why don't you continue with your

1 cross-examination of Mr. Schweitzer.

2 BY MR. AUSTIN:

3 Q Mr. Schweitzer, are you aware of how many  
4 project managers you had to deal with on the 6176 CUP  
5 application?

6 A My own project managers?

7 Q Through DSD.

8 A Well, certainly, Mr. Tirandazi. And I think  
9 later there may have been another one. I'm not certain.

10 Q I believe there have been four. Does that  
11 sound accurate?

12 A That does not sound accurate.

13 Q So I remember on the board -- I didn't pull out  
14 that particular exhibit.

15 But I did see a name possibly. Does Delores  
16 Gonzales sound familiar?

17 A Delores Gonzales I believe is an employee at  
18 the Development Services Department. She is not a  
19 development project manager, as far as I know.

20 Q If I could direct your attention to Exhibit 47  
21 in the binder. It's already been admitted in evidence.  
22 Towards the top left, it says project manager, Gonzales.

23 A Just give me one moment.

24 I have the exhibit in front of me.

25 Q Yes. Do you see in that top left corner a  
26 couple lines down, it says project manager, Delores  
27 Gonzales?

28 A I do.

1 Q Okay. And this was on your project, was it  
2 not?

3 A This is a correspondence from the City  
4 indicating comments at the completeness review portion  
5 of our project.

6 Q So --

7 A I don't recall us dealing with Ms. Gonzales  
8 directly at all.

9 Q And through your company, a lot of people deal  
10 with the City for you. Correct? You don't always take  
11 lead on every single issue, do you?

12 A For the cannabis projects, I'm usually the  
13 person that takes the lead on all the issues. Although,  
14 it is common for other people on my staff to communicate  
15 with the City.

16 Q So you said one of the main project managers  
17 was Tirandazi?

18 A Yes. I think it's important to differentiate  
19 that once the project is in full re --

20 Q It's a "yes" or "no" question.

21 A Was the question if Mr. Tirandazi was one of  
22 the main project managers?

23 Q Yes, on the project.

24 A The City doesn't have that title. She was a  
25 development project manager, yes.

26 Q Okay. Do you remember a woman named Cherlyn  
27 Cac, C-a-c?

28 A Yes.

1 Q Was she in a similar position as Tirandazi?

2 A As I understand it, she at least was a  
3 development project manager, and she did work on  
4 cannabis projects as well.

5 Q And after her, was there another project  
6 manager who was assigned to the CUP on 6176?

7 A It's possible. The City does change staff.  
8 It's up to them to do that.

9 Q When there's a change in staff for a project on  
10 the CUP, does that at all delay the process of the  
11 application?

12 A Are you asking a broad question for all CUPs?

13 Q For yours in particular, do you think that  
14 would have slowed the process down at all?

15 A That has happened to us on some projects, and  
16 it really depends on that particular project manager.  
17 Some are a little faster to respond. Some are a little  
18 slower. We don't get the same level of service with  
19 everybody.

20 Q Are you aware of how many project managers the  
21 6220 CUP application had to deal with?

22 A City project managers?

23 Q Yes.

24 A I'm not aware.

25 Q And how long did the 6220 process take? You  
26 said it started in the first months of 2018. Correct?

27 A I don't believe I've said that.

28 Q I believe you did say in one of the first

1 months of 2018 is when you found out about Aaron  
2 Magagna's filing for the CUP. Correct?

3 A I did become aware of that project in 2018, but  
4 I don't recall offhand specifically when it started, as  
5 you stated.

6 Q I believe it was Exhibit 67, there was an email  
7 chain between you and Gina Austin. It's towards the  
8 middle of the page.

9 This will be a "yes" or "no" question. Do you  
10 see the part where Gina Austin is talking to -- or is  
11 emailing you about how Tirandazi is slow? Do you see  
12 that email?

13 A I see a response from Gina Austin at the bottom  
14 of that. There are three correspondences on that page.  
15 And what she says is she is a little slow. I will call  
16 her today.

17 Q Okay. All right. Shifting gears a little bit,  
18 in order to get the 6176 CUP application approved, how  
19 many outstanding issues did you have?

20 A Throughout the course of the project?

21 Q Incomplete issues that were outstanding.

22 A At what point in time?

23 MR. TOOTHACRE: Vague and ambiguous, your  
24 Honor.

25 THE COURT: Sustained. Why don't you narrow  
26 the time frame.

27 MR. AUSTIN: Okay.

28

1 BY MR. AUSTIN:

2 Q Roughly -- let's even go back to a year ago  
3 when you were doing a soils analysis, when you had to  
4 come back for court orders. So you said that was  
5 roughly January/March of 2018. Correct?

6 A I'm sorry. One more time?

7 Q In order to get access to Mr. Cotton's property  
8 on 6176, in order to do the geotechnical investigation,  
9 you had to get -- there had to be two court orders.  
10 Correct?

11 A I was informed and I believed that. But I  
12 didn't participate in those legal proceedings.

13 Q Okay. I do believe I did see some declarations  
14 with your name on it for each of those proceedings.

15 MR. WEINSTEIN: Objection, your Honor.

16 MR. TOOTHACRE: Assumes facts, your Honor.

17 THE COURT: One moment. Only one of you.

18 MR. TOOTHACRE: Assumes facts.

19 THE COURT: The objection is sustained.

20 Next question.

21 BY MR. AUSTIN:

22 Q In March 2018, do you know approximately how  
23 many outstanding issues needed to be resolved with DSD  
24 in order to have final approval from the City for the  
25 CUP application?

26 A I don't recall specifically without looking at  
27 the record how many open cycle issues. But I do want to  
28 be clear, the staff does not approve these projects.

1 They recommend it for approval, and it goes to the  
2 hearing officer in this case. But I don't recall  
3 without looking at the City's cycle issues to be able to  
4 tell you with certainty if it was 10 or 50 or 100. I  
5 just don't have that good of a memory.

6 Q Do you have any type of estimate,  
7 approximation. Fifty to 75? Seventy-five to 100?

8 A Between 10 and 100.

9 Q Okay. Thank you.

10 Based on your experience in assisting with so  
11 many marijuana and cannabis-related projects, you feel  
12 like you're pretty knowledgeable in this area of law.  
13 Correct?

14 A No, I'm not an attorney, and I would not say  
15 I'm knowledgeable in any area of the law, unfortunately.

16 Q When it comes to municipal codes, wouldn't you  
17 be aware of a great many of those --

18 A I wouldn't characterize it as a great many.  
19 We've worked on some jurisdictions. I had mentioned  
20 Oakland before, Richmond, Santa Barbara, San Diego, the  
21 City of San Diego, County of San Diego. And I'm  
22 familiar with to some extent and to a different extent  
23 those municipal codes, depending on how many projects  
24 we've done in that jurisdiction.

25 Q Are you aware of any lawsuits or sanctions that  
26 have been leveled against Mr. Geraci in relation to  
27 illegal cannabis dispensaries?

28 A I'm not aware.

1 Q You're not aware of those?

2 A No.

3 Q If theoretically he had been sanctioned by a  
4 governmental agency for illegal dispensaries, are you  
5 aware of that barring Mr. Geraci from being the  
6 applicant on a CUP?

7 MR. TOOTHACRE: Assumes facts. And it's an  
8 incomplete hypothetical.

9 THE COURT: Overruled.

10 THE WITNESS: What we focus on in the Municipal  
11 Code is what it relates to the drawings. On most  
12 projects, we have an attorney, and they would deal with  
13 these legal issues. So I don't have in-depth knowledge  
14 of that. I have heard in the past that it may affect  
15 it, but I can't tell you with certainty that I know or  
16 don't know that. It's just not an area of the Code that  
17 we specialize in.

18 BY MR. AUSTIN:

19 Q So if someone told you -- if an attorney told  
20 you that it was illegal, would you still try to assist  
21 Mr. Geraci in pursuing the CUP?

22 MR. TOOTHACRE: Same objections.

23 THE COURT: The objection is sustained.

24 MR. AUSTIN: No further questions.

25 THE COURT: All right. Redirect?

26 MR. TOOTHACRE: Yeah. Just a couple areas  
27 quickly, your Honor.

28 \ \ \



1 (Redirect examination of Abhay Schweitzer)

2 BY MR. TOOTHACRE:

3 Q Mr. Schweitzer, with regard to the geotechnical  
4 soils analysis report, you became aware that the -- that  
5 the City was requiring such a report at the completeness  
6 review. Is that correct?

7 A We received the comments from the completeness  
8 review.

9 Q And that was not on October 31 when you  
10 submitted the application. Is that correct?

11 A Yeah. They're -- they're not that fast. I  
12 think it was about a couple weeks after that submittal.

13 Q Okay. And at the time you were made aware that  
14 the City was going to require a geotechnical soils  
15 analysis, were you already aware that Mr. Cotton was not  
16 allowing you on the property to post notice?

17 A I don't remember the exact date, but I know it  
18 was early on that I was informed that, no, we were not  
19 welcome on the property nor was anybody else. At least,  
20 that was by the time of the posting that I -- that there  
21 was a picture of. So it was quite early on.

22 Q And did you begin at that time to start trying  
23 to come up with an alternative to having the soils  
24 engineers actually go on the property?

25 A I believe we did because we had to do that in  
26 order to address the comments. So we -- we did take  
27 action on every single comment we received, including  
28 that one.

1           Q     Okay. The number of outstanding cycle issues  
2 just referred to by Mr. Austin, was it a large number in  
3 comparison to other projects?

4           A     Are you referring to at the date --

5           Q     Yes.

6           A     -- that Mr. Austin -- I think at that point, we  
7 felt it was towards the tail end of the project. It  
8 wasn't unusual the number of comments we received.

9           Q     Okay. And did you feel that you were going to  
10 be able to address all those comments in a timely  
11 fashion and get the matter before hearing?

12          A     We were pretty confident after the third  
13 submittal that there was nothing there that we couldn't  
14 address and that if the project went to hearing and  
15 there was no other reason, as in the opposing project,  
16 for example, to deny it, that it would have gotten  
17 approved.

18          Q     Focusing on 6220, what contacts did you have  
19 with the City with regard to 6220, the competing  
20 application?

21          A     So part of what we did was to request from the  
22 City drawings for that project. We had contact in that  
23 manner. We also researched -- I think it might have  
24 been Carlos Gonzales that researched the records  
25 department at the City for 6220 to see if anything had  
26 been permitted on that property originally. And we may  
27 have researched if there was code compliance. We  
28 typically do that. So we contacted the City several

1 times on 6220 as part of our due diligence to see what  
2 state that project was in and how we could best oppose  
3 it.

4 Q Is it your belief that that is the reason your  
5 name and Mr. Carlos' name shows up on the City's website  
6 on that particular project?

7 A That's the only reason I can think of that our  
8 names would be there.

9 Q Okay. And you and TECHNE, nor Carlos, none of  
10 you did any work on behalf of 6220?

11 A Myself or my firm or Carlos, I'm not aware that  
12 we did any work whatsoever on behalf of that project.

13 MR. TOOTHACRE: Thank you. I have nothing  
14 further, your Honor.

15 THE COURT: Anything else, Counsel?

16 MR. AUSTIN: No, your Honor.

17 THE COURT: All right. May Mr. Schweitzer be  
18 excused?

19 MR. TOOTHACRE: Yes, your Honor.

20 THE COURT: Counsel?

21 MR. AUSTIN: Yes.

22 THE COURT: Thank you, Mr. Schweitzer.

23 THE WITNESS: Thank you.

24 THE COURT: All right. Plaintiff, your next  
25 witness?

26 MR. TOOTHACRE: Plaintiff would call Firouzeh  
27 Tirandazi.

28 THE COURT: Is he right out --

1 MR. TOOTHACRE: She.

2 THE COURT: I'm sorry. Is she right outside?

3 MR. TOOTHACRE: I believe so.

4 THE COURT: Madam Deputy, may I ask you to get  
5 the next witness.

6 THE BAILIFF: Your Honor, this witness is being  
7 accompanied by her attorney.

8 THE COURT: Thank you very much. Counsel, you  
9 can make yourself comfortable in the audience section.

10 Ma'am, if you could follow the directions of my  
11 clerk, please.

12

13

14 Firouzeh Tirandazi,  
15 being called on behalf of the plaintiff/cross-defendant,  
16 having been first duly sworn, testified as follows:

16

17 THE CLERK: Please state your full name and  
18 spell your first and last name for the record.

19 THE WITNESS: My name is Firouzeh Tirandazi.

20 F-i-r-o-u-z-e-h. Last name Tirandazi,

21 T-i-r-a-n-d-a-z-i.

22 THE COURT: All right. Counsel, whenever  
23 you're ready.

24 MR. TOOTHACRE: Thank you, your Honor.

25 (Direct examination of Firouzeh Tirandazi)

26 BY MR. TOOTHACRE:

27 Q Good morning, Ms. Tirandazi.

28 A Good morning.

1 Q You work for the City. Is that correct?

2 A Correct.

3 Q And when did you begin working for the City?

4 A 1993.

5 Q And you worked from 1993 until approximately  
6 2006. Is that correct?

7 A That is correct.

8 Q And what was your position at the City between  
9 1993 and 2006?

10 A Associate planner and then development project  
11 Manager II.

12 Q Okay. Are both of those positions within the  
13 DSD?

14 A No.

15 Q Okay. What department are they in?

16 A Environmental Services Department and then  
17 Development Services Department.

18 Q Okay. And did you take a leave of absence in  
19 2006?

20 A Yes.

21 Q For what period of time?

22 A I returned to the City in 2015.

23 Q Okay. And what was your position when you left  
24 the City in 2006?

25 A Development Project Manager II.

26 Q Okay. And that is in the DSD department.  
27 Correct?

28 A Yes.

1 Q And, currently, what's your position?

2 A Development Project Manager III.

3 Q Okay. Is that the highest of the development  
4 project managers within the City?

5 A Yes.

6 Q Okay. And what is your work history with the  
7 City since you returned in 2015?

8 A Could you clarify the question.

9 Q Yes.

10 What positions have you held since you returned  
11 in 2015?

12 A Development Project Manager II and then  
13 Development Project Manager III.

14 Q Okay. And do you work with regard to marijuana  
15 CUP applications?

16 A Currently, yes.

17 Q Okay. Can you generally give the jury just  
18 a 10,000-foot view of what a CUP application with regard  
19 to medical marijuana requires.

20 A Submittal requirements, or processing  
21 requirements?

22 Q First, submittal.

23 A I'm not involved with submittal. So I wouldn't  
24 know.

25 Q Okay. Is the first step at your level a  
26 completeness review?

27 A I don't do completeness check.

28 Q Is that in submittals?

1 A That's correct.

2 Q Okay. And what is -- what is the first area or  
3 the first phase that you address with regard to CUPs?

4 A I receive the application once it's been deemed  
5 complete.

6 Q Okay.

7 A And distribute it for review. So I --

8 Q And who do you distribute it to?

9 A I don't do the distribution. It goes to the  
10 typical review disciplines that are involved in reviews  
11 of conditional use permits.

12 Q And what are some of those disciplines?

13 A Engineering, transportation, planning, and  
14 environmental are the key ones.

15 Q Okay. I will ask you to look at Exhibit 34.  
16 It should be in front of you. It's in evidence, your  
17 Honor.

18 A The one that's right in front of me? It  
19 says --

20 Q Is it open to that?

21 A I don't know. Oh.

22 THE COURT: Counsel, why don't you approach.  
23 There are so many volumes up here.

24 THE WITNESS: I don't know which one I'm  
25 supposed to look at.

26 BY MR. TOOTHACRE:

27 Q Okay.

28 A I have 65 and --

1 Q It should be in this one.

2 A This one?

3 Q Thirty-four. Yeah.

4 A Okay.

5 Q And what is Exhibit 34?

6 A That's an invoice.

7 Q Exhibit 34?

8 A Oh. Wait. Sorry. The general application.

9 Q Okay. And have you seen this particular

10 general application before?

11 A Yes. This -- this comes with the project file

12 that I receive.

13 Q Okay. And it's executed by Rebecca Berry. Is

14 that correct?

15 A Correct.

16 Q Okay. Turn back to -- a couple pages to the

17 second page, DS-190.

18 Is that part of the package that was submitted

19 to you?

20 A Yes.

21 Q Also submitted by Rebecca Berry. Is that

22 correct?

23 A Yes.

24 Q What is the City's purpose in having the DS-190

25 form?

26 A The purpose of this form is just the -- for the

27 applicant to validate that the project they're

28 submitting is in compliance with the separation



1 requirements.

2 Q Okay. Turning to page 3, Form DS-3242.

3 Is that a deposit account/financial  
4 responsibility -- financially responsible party form?

5 A Yes.

6 Q And what is the City's purpose in having this  
7 form?

8 A This is the -- signed by the individual that is  
9 responsible for all costs associated with the processing  
10 of the application.

11 Q Okay. And is it the financially responsible  
12 party who has the authority to withdraw an application  
13 if they so desire?

14 A It's defined in the Code in terms of who can  
15 withdraw an application.

16 Q I'm sorry. One more time?

17 A It's defined in the Municipal Code in terms of  
18 who can withdraw an application.

19 Q Okay. Does the City recognize that the  
20 financially responsible party is the party that can  
21 withdraw an application?

22 A Typically, it's the -- the permit holder and  
23 the applicant, and that's defined in the Municipal Code.

24 Q Okay. I would like to refer you to Exhibit 65,  
25 which I believe is in evidence, your Honor.

26 THE COURT: It is.

27 MR. TOOTHACRE: Thank you. It's in the next  
28 book.

1 BY MR. TOOTHACRE:

2 Q Do you recognize that document, Ms. Tirandazi?

3 A Yes.

4 Q And what is this document?

5 A The email?

6 Q Yes.

7 A It's a --

8 Q Is that an email that you drafted?

9 A Yes.

10 Q And who -- who was it drafted to?

11 A Abhay Schweitzer.

12 Q Okay.

13 A And Becky.

14 Q Focusing on the first paragraph, what was the  
15 information you were trying to convey?

16 A To convey that the project is in the CO-2-1  
17 zone and the medical marijuana consumer cooperative is  
18 not permitted in this zone and that staff would be  
19 recommending denial.

20 Q And was that your interpretation on March 14th,  
21 2017?

22 A That is correct.

23 Q Okay. And subsequently, do you know whether or  
24 not the Municipal Code was amended to allow medical  
25 marijuana project at that location?

26 A Yes, I was made aware after.

27 Q After that particular day?

28 A Yes.

1 Q Do you recall who made you aware?

2 A I -- I don't.

3 Q Okay. Was there a bulletin or an email?

4 A I believe it was a -- from the Code team. I  
5 believe I was updated by the Code team. I don't  
6 remember specifically.

7 Q Fair enough.

8 Let me have you refer to Exhibit 66, which is  
9 in evidence, your Honor.

10 THE COURT: Yes. It is.

11 BY MR. TOOTHACRE:

12 Q And I'll ask you if you recognize that  
13 document, Ms. Tirandazi.

14 A Yes.

15 Q And what is this document?

16 A So this is a standard letter that's prepared by  
17 our support staff that provides the point of contact for  
18 the project with the noticing requirements, the posting  
19 of the notice, and letting them know that their  
20 application has been deemed complete in the process.

21 Q The bottom paragraph, if you can call that up,  
22 you indicate that you recommend that they contact Ken  
23 Marlborough.

24 Who is Ken Marlborough?

25 A He, per this letter, is the chair of the  
26 Encanto neighborhoods community planning group.

27 Q And what does the community planning group have  
28 to do with the application of the CUP?

1           A       The recommendation of the planning group is  
2 forwarded to the decision maker.

3           Q       And the last paragraph on page 2 indicates if  
4 they have any questions with the notice -- the posted  
5 notice requirements to contact you. Is that correct?

6           A       That is correct.

7           Q       Okay. Let me have you refer to Exhibit 68?

8           MR. TOOTHACRE: Your Honor, I'd like to offer  
9 68.

10          THE COURT: It is in evidence.

11          (Premarked Joint Exhibit 68, Email to Darryl  
12 Cotton from Firouzeh Tirandazi re PTS 520606 -  
13 Federal Blvd MMCC, dated 3/16/17 and prior email  
14 thread, was admitted into evidence.)

15 BY MR. TOOTHACRE:

16          Q       Do you recognize that document, Ms. Tirandazi?

17          A       Yes.

18          Q       And is this an email string between yourself  
19 and Mr. Cotton?

20          A       Okay. What is the question? I'm sorry?

21          Q       Is this an email string between yourself and  
22 Mr. Cotton?

23          A       I'm looking at the first page. And it seems to  
24 be, yes.

25          Q       Okay. On the first page, the first paragraph,  
26 you indicate that, "As requested, please find the  
27 attached ownership disclosure statement signed by you."  
28 paren, "property owner," end paren, "and Rebecca Berry,"

1     paren, "tenant/lessee," end paren, "on October 31."

2             Did you have a discussion with Mr. Cotton as to  
3 why he was requesting the ownership disclosure  
4 statement?

5     A     I believe he was asking about the application  
6 that is being processed on his property.

7     Q     Okay. Did he say why he required a copy of the  
8 ownership disclosure statement?

9     A     He was not sure why the City is processing an  
10 application on his property, that he was not aware of  
11 such an application being processed. And I indicated  
12 that he has signed an ownership disclosure statement  
13 that was submitted with the application.

14     Q     Okay.

15     A     And requested a copy.

16     Q     And in the second paragraph on the first page,  
17 you indicate the project was deemed complete. Is that  
18 correct?

19     A     That is correct.

20     Q     And it was currently in the first review cycle.  
21 What does that mean?

22     A     So projects that are submitted -- processing of  
23 discretionary applications, there could be multiple  
24 review cycles where the initial review is distributed to  
25 the review team, they complete their review, and an  
26 assessment letter is issued. And the applicant will  
27 need to resubmit.

28             That will be the second review cycle addressing

1 issues. I didn't find the first review cycle until all  
2 reviews are resolved.

3 Q With regard to the last sentence in that  
4 paragraph, you indicate as a property owner, if you wish  
5 to withdraw the application, please notify me in  
6 writing.

7 Did Mr. Cotton indicate to you that he wished  
8 to withdraw the application?

9 A I don't recall.

10 Q Okay. Turn to the next page. The top appears  
11 to be an email dated March 16th, 2017, from Mr. Cotton  
12 to you. He says "Thank you for speaking with me today."

13 Did Mr. Cotton come to your office? Do you  
14 recall?

15 A I do recall him coming to the office.

16 Q Okay. And he says "This is in fact my  
17 signature, and I think the applicant is related to a  
18 party that I have a preliminary understanding with. I  
19 will handle matters on my end."

20 Was that your acknowledgment to you that he had  
21 in fact signed the ownership disclosure statement?

22 A I mean, what it's saying here is what it's  
23 saying. I don't know if it was an acknowledgment that  
24 he had signed it or not, but I think he saw his  
25 signature on the ownership disclosure statement that I  
26 sent to him.

27 Q Fair enough.

28 On the last email on that page, it appears to

1 be an email from Mr. Cotton to you, dated March 21. He  
2 says, "As a follow-up to our recent conversations, the  
3 potential buyer, Larry Geraci, CC'd herein, and I have  
4 failed to finalize the purchase of my property. As of  
5 today, there are no third parties that have any direct,  
6 indirect or contingent interests in my property. The  
7 application currently pending on my property should be  
8 denied because the applicants have no legal access to my  
9 property."

10 Did you receive that email from Mr. Cotton?

11 A It looks like it was sent to me then, yes.

12 Q Do you have any independent recollection of  
13 receiving that?

14 A It was a while ago, but it looks like it was  
15 sent to my email account.

16 Q Okay. Did you take any action upon receiving  
17 that email?

18 A I don't recall.

19 Q Do you recall Mr. Schweitzer indicating to you  
20 that he was having difficulty posting notice on the  
21 property at 6130 -- at 6176 Federal Boulevard?

22 A Possibly. It was so long ago, I don't recall  
23 the details.

24 Q Okay. Let me have you refer, if I could, to  
25 Exhibit 86.

26 MR. TOOTHACRE: This is in evidence, your  
27 Honor. I believe this email reads from the back to the  
28 front.

1 BY MR. TOOTHACRE:

2 Q Starting on the last page, Ms. Tirandazi. Does  
3 that appear to be an email to you from Abhay indicating  
4 "We are working with the property owner on this project  
5 to get the notice posted but we have been unable to do  
6 it yet"?

7 A Yes.

8 Q "Would it be possible to get an extension?"

9 A Yes.

10 Q Do you recall him asking you for an extension  
11 on Mr. Geraci's project?

12 A It's in the email. So yes.

13 Q Do you recall whether or not you granted an  
14 extension?

15 A So I think I gave him the section of the  
16 Municipal Code, that it needs to be posted within five  
17 days. It's in the Municipal Code. It's not --

18 Q That's on the second page of the email.  
19 Correct?

20 A Mm-hmm.

21 THE REPORTER: Answer in words to the question,  
22 for the reporter, please.

23 BY MR. TOOTHACRE:

24 Q That's on the second page of the email.  
25 Correct?

26 A Yes.

27 Q And the first page of the email, Mr. Schweitzer  
28 indicates to you "Thank you for the fast response. What



1 happens if we can't post on time or if we can't post at  
2 all?" Is that correct?

3 A That is correct.

4 Q And then you indicate at the top it would be in  
5 violation of the Code. Correct?

6 A Correct.

7 Q And let me have you refer to Exhibit 91, which  
8 is in evidence, your Honor.

9 THE COURT: It is.

10 BY MR. TOOTHACRE:

11 Q What is that document, Ms. Tirandazi?

12 A The verification of posting of public notice.

13 Q So the notice did eventually get posted.  
14 Correct?

15 A Based on the verification, yes.

16 Q Okay. Let's go to Exhibit 96, which is not in  
17 evidence, your Honor. I'll offer it.

18 THE COURT: Any objection?

19 MR. AUSTIN: What number?

20 THE COURT: Ninety-six.

21 MR. AUSTIN: No objection.

22 THE COURT: Exhibit 96 will be admitted.

23 (Premarked Joint Exhibit 96, Email to Firouzeh  
24 Tirandazi from Darryl Cotton re Federal Blvd.  
25 Application, dated 5/15/17, was admitted into  
26 evidence.)

27 BY MR. TOOTHACRE:

28 Q Does this appear to be an email string between

1 you and Mr. Cotton?

2 A Yes.

3 Q And the bottom email, you indicate on May 15th,  
4 2017, "You may have misunderstood me. If the property  
5 has changed ownership, feel free to provide an updated  
6 general application, ownership disclosure statement, and  
7 the new grant deed so that we may have the most updated  
8 information for the project file. If as a result of  
9 this there is a new financial responsible party, please  
10 provide a chain of responsible party form." I think  
11 that's supposed to be change.

12 A Change.

13 Q Were you under the impression the property had  
14 changed hands at that point in time?

15 A You know, based on this email, it appears that  
16 I may have been -- I may have been informed that the  
17 property owner has changed.

18 Q Okay. And did you ever receive the information  
19 you were requested if the property owner had changed?

20 A No.

21 Q Was there ever a second competing CUP  
22 application started with regard to the same property as  
23 Mr. Geraci was working on the project?

24 A I believe so, but I don't recall being involved  
25 in that application.

26 Q Okay. Let me refer you to Exhibit 98, which is  
27 in evidence, your Honor. And specifically just talking  
28 about the letter on the first page, May 19th, 2017.

1 Do you recognize that document?

2 A Yes.

3 Q It's a letter to you by Schweitzer?

4 A Yes.

5 Q Is that from you?

6 Yes. Page 6, is that your signature?

7 A Yes.

8 Q And you CC'd Ken Marlborough on this as well.

9 Correct?

10 A Yes.

11 Q And you indicate to Mr. Schweitzer the  
12 Development Services Department has completed the  
13 initial review of the project referenced above and is  
14 describing -- you give a description of that, the  
15 project in question. Correct?

16 A Correct.

17 Q The next full paragraph, you start out "City  
18 staff has been informed the project site has been sold."

19 Does that refresh your recollection that  
20 somebody had informed the City staff that the site had  
21 been sold?

22 A Probably based on the communication from  
23 Mr. Cotton that he had sold the property. So I just  
24 wanted to clarify that.

25 Q Okay. I would next refer you to Exhibit 106,  
26 Ms. Tirandazi, which is not in evidence yet, your Honor.  
27 May I offer it?

28 THE COURT: Any objection?

1 MR. AUSTIN: No, your Honor.

2 THE COURT: Exhibit 106 will be admitted.

3 (Premarked Joint Exhibit 106, Email to Rodney  
4 Bruce from Firouzeh Tirandazi Re PTC 520606,  
5 dated 8/09/17, was admitted into evidence.)

6 BY MR. TOOTHACRE:

7 Q And this is another one of those emails that  
8 reads back to front.

9 Do you recognize this document, Ms. Tirandazi?

10 A Okay.

11 Q Do you recognize that document?

12 A It has my signature on it. So I assume.

13 Q Starting on page 2. This appears to be an  
14 email from somebody named Daniel Tames, president and  
15 lead designer. He says, "Hello, Firouzeh. My name is  
16 Daniel Tames from Fine-TE studio. I'm trying to see if  
17 it's possible to schedule a meeting with you and see  
18 some issues and that we have with regards to project  
19 520606. Please let me know what day of the week is  
20 better for you."

21 Did you ever have a meeting with Mr. Tames?

22 A No, I don't recall having a meeting with  
23 Mr. Tames.

24 Q And the Project No. 520606, that was  
25 Mr. Geraci's and Mr. Cotton's project with regard to  
26 6176 Federal Boulevard?

27 A The assessment letter would have called. I  
28 don't remember the exact project number. Just to be

1 clear, I would refer to the assessment letter for that  
2 project.

3 Q Let me refer to you the bottom email on the  
4 first page. It appears to be from Rodney Bruce sent  
5 Monday, August 7, 2017, to Daniel Tames but was CC'd to  
6 you. Correct?

7 A Mm-hmm.

8 Q It says "Firouzeh, we are in the process of  
9 starting a different application outside of the one you  
10 currently have in progress for the Federal Boulevard  
11 property."

12 Do you recall whether or not you ever received  
13 that application?

14 A I don't recall.

15 Q Okay. Do you recall who Rodney Bruce was?

16 A No. I don't believe I met him.

17 Q Okay. And in the top email -- or, yes, email  
18 on that string, you indicate in reply that "Development  
19 Services Department is currently processing the CUP for  
20 an MMCC on the site located at 6176 Federal Boulevard.  
21 Another application for the same use on the same  
22 property cannot be processed."

23 Was that your belief at the time?

24 A That is correct.

25 Q Okay. A new -- you state "A new application  
26 can be accepted if the current application is withdrawn.  
27 A request to withdraw the current application must come  
28 from both the property owner and the financial

1 responsible party associated with the current CUP  
2 application."

3 Did you ever receive such a request by the  
4 property owner and the financial responsible party on  
5 Mr. Geraci's project?

6 A No.

7 Q And then next sentence, you indicate, "Daniel  
8 advised that the ownership of the property has changed."

9 Do you recall Daniel Tames telling you that?

10 A Possibly. I don't recall.

11 Q Okay. And you indicate "Prior to moving  
12 forward on the current application, I will need an  
13 updated general application, a new ownership disclosure  
14 statement, and a new grant deed so that we may have the  
15 most updated information in the project file."

16 Is that correct?

17 A Correct.

18 Q And did you receive those documents to the best  
19 of your recollection?

20 A No.

21 MR. TOOTHACRE: Okay. Your Honor, I would like  
22 to refer to 107, which is not in evidence yet. I would  
23 offer it.

24 THE COURT: Any objection?

25 MR. AUSTIN: No objection.

26 THE COURT: Exhibit 107 will be admitted.

27 \ \ \

28 \ \ \

1                   (Premarked Joint Exhibit 107, Email to Firouzeh  
2                   Tirandazi from Abhay Schweitzer Re PTC 520606,  
3                   dated 8/10/17, was admitted into evidence.)

4 BY MR. TOOTHACRE:

5           Q       I'm just going to focus on the top email, which  
6           is an email to you from Abhay Schweitzer and ask if you  
7           recognize that.

8           A       Yes.

9           Q       And this is Abhay Schweitzer responding to that  
10          previous email. Correct?

11          A       To which previous email?

12          Q       To the email in which --

13          A       Yes.

14          Q       -- Mr. Tames indicates that the property has  
15          changed hands.

16          A       Yes.

17          Q       And Mr. Schweitzer indicates "The ownership of  
18          this property has not changed hands since submitted.  
19          The information we originally submitted in the general  
20          application accompanying grant deed and financially  
21          responsible party is accurate. Therefore, no revision  
22          to those documents are needed. The only change in  
23          ownership will be done after the CUP is approved and  
24          from the current owner to our client. We intend to  
25          continue processing this project without any delays."

26                   Did you read that at the time?

27          A       I believe so.

28          Q       And did Mr. Schweitzer continue processing his

1 application for the CUP?

2 A Yes.

3 Q And do you recall an issue with Mr. Schweitzer  
4 not being able to get a soils engineering company access  
5 to the property?

6 A I don't specifically recall that.

7 Q Let me have you refer to Exhibit 108, which is  
8 in evidence, your Honor.

9 THE COURT: It is.

10 BY MR. TOOTHACRE:

11 Q This is a fairly lengthy email string that is  
12 dated between August 14th and August 15th. Is that  
13 correct, the email string?

14 A Yes.

15 Q Okay. On the very back page of that email,  
16 page 12 -- bring that up.

17 Does that refresh your recollection at all that  
18 Mr. Schweitzer was attempting -- was having problems  
19 with the geotechnical engineers getting access to the  
20 property and he was trying to submit reports from nearby  
21 properties to satisfy the City?

22 A It appears so by this email.

23 Q Okay. And then on page 5 of that exhibit, it  
24 appears that Mr. Schweitzer is replying in the email to  
25 Mr. Kreg. Do you know who Mr. Kreg is, K-r-e-g? Is  
26 that Kreg Mills?

27 A That is correct.

28 Q Okay. And what department is Kreg Mills in?



1 A He's our geology -- geology section.

2 Q Okay. And he indicates that he will coordinate  
3 trying to submit these other two properties through you.  
4 Is that correct?

5 A Yes. Abhay is coordinating through me.

6 Q Right. And if you go to the top of that, your  
7 response is essentially that that's not good enough  
8 because the assessment letter specifically asked for a  
9 geotechnical report as to that property. Correct?

10 A Correct.

11 Q Pardon me?

12 A I -- I'm trying to -- I'm basically letting him  
13 know that it's a required document that needs to be  
14 submitted.

15 Q Right. Thank you.

16 And I want to have you refer to Exhibit 114,  
17 which I will offer in evidence, your Honor.

18 THE COURT: Any objection?

19 MR. AUSTIN: No, your Honor.

20 THE COURT: Exhibit 114 will be admitted.

21 (Premarked Joint Exhibit 114, top email string  
22 to Holly Glavinic from Firouzeh Tirandazi, dated  
23 September 20, 2017, was admitted into evidence.)

24 BY MR. TOOTHACRE:

25 Q Do you recognize that document, Ms. Tirandazi?

26 A Yes.

27 Q And in that document, the last paragraph of  
28 your email, you indicate, "Please be advised that the

1 City is only able to make a decision on one of these  
2 applications. The first project deemed ready for a  
3 decision by the hearing officer will be scheduled for a  
4 public hearing. Following any final decision on one of  
5 the CUP applications submitted for the above-referenced  
6 address, the CUP application still in process would be  
7 obsolete and would need to be withdrawn."

8 Why would that be the case?

9 A Because of the separation requirements  
10 established for -- between marijuana outlets or medical  
11 marijuana consumer cooperatives by the Municipal Code.

12 Q So once one goes through, the other one is dead  
13 in the water, so to speak?

14 A They have to be within a thousand feet of each  
15 other.

16 Q Okay. Do you recall how many project managers  
17 were on this particular project, City project managers?

18 A I don't recall how many.

19 Q Well, do you recall -- you were a project  
20 manager on this. Correct?

21 A Yes, I was.

22 Q And Cherlyn Cac was a project manager on this  
23 project. Correct?

24 A Yes.

25 Q And why did you cease being the project  
26 manager?

27 A Because I was transitioned to a different unit  
28 within our department, the expedited affordable housing

1 section.

2 Q And Cherlyn Cac was assigned to this project in  
3 your stead?

4 A That is correct.

5 Q Okay. And did you become her supervisor?

6 A Yes.

7 Q You became a Project Manager III. Correct?

8 A Yes.

9 Q And she's a Project Manager II?

10 A Yes.

11 Q Okay. Is there any significant delay in a  
12 project when project managers are changed within the  
13 City on a project?

14 A No.

15 Q Does it take a while for the project managers  
16 to get up to speed at all?

17 A No.

18 Q Is it unusual to have several project managers  
19 from the City on a particular project?

20 A No.

21 MR. TOOTHACRE: I have nothing further, your  
22 Honor.

23 THE COURT: Cross-examination.

24 MR. AUSTIN: Your Honor, looking at the time,  
25 does it make sense for me to start now?

26 THE COURT: Let's -- let's get going, Counsel.

27 MR. AUSTIN: Okay.

28 \ \ \

1 (Cross-examination of Firouzeh Tirandazi)

2 BY MR. AUSTIN:

3 Q Good afternoon.

4 A Good afternoon.

5 Q So, earlier, you were shown some exhibits, some  
6 various forms by the DSD. And there are areas where the  
7 language requires all people associated with the project  
8 be listed, anyone with an interest in the property be  
9 listed. Correct?

10 MR. TOOTHACRE: Your Honor, vague and  
11 ambiguous. Can we know which exhibit we're referring  
12 to?

13 THE COURT: Overruled.

14 THE WITNESS: Is there a specific exhibit?

15 BY MR. AUSTIN:

16 Q Yes. Actually, Exhibit 30. And also 34, there  
17 are several other general applications?

18 THE COURT: Which exhibit, Counsel, are you  
19 referring to?

20 MR. AUSTIN: Thirty.

21 THE COURT: All right.

22 THE WITNESS: This is the ownership disclosure  
23 statement.

24 BY MR. AUSTIN:

25 Q Yes. Look at Section 1. It does say anyone --  
26 it's about three lines down. It says anyone with any  
27 interest should be listed on this form.

28 Is that -- should we take that literally, or is

1 the City not very -- not very specific with that  
2 language?

3 MR. TOOTHACRE: Vague, ambiguous, your Honor.

4 THE COURT: Do you understand the question,  
5 ma'am?

6 THE WITNESS: I do.

7 THE COURT: Please answer.

8 The objection is overruled.

9 Please answer it.

10 THE WITNESS: So this form is submitted with  
11 the application. It needs to identify the property  
12 owner, the individual that's on the grant deed  
13 associated with the property. If it's an LLC, then  
14 typically we do request an attachment that includes all  
15 the names and officers of the LLC or the corporation  
16 that have an interest in the property.

17 BY MR. AUSTIN:

18 Q Okay. So the City of San Diego wants to know  
19 everyone who is actually involved with the CUPs.  
20 Correct?

21 A That's not the purpose of this form.

22 Q Not that form, but overall for the CUPs, anyone  
23 who has an interest in the property should be disclosed.  
24 Correct?

25 A Yes.

26 Q Okay. All right. I guess what I was trying to  
27 ask is, is the request literal, or just a suggestion  
28 when it says to list everyone involved? Because it

1 sounds -- it sounds like everyone needs to be listed,  
2 when you say even an LLC will include attachments with  
3 all names of all people.

4 A I guess I don't understand what you mean by  
5 "everyone." This is information that is provided to the  
6 City by the applicant. So by submitting this and  
7 signing it, they're letting the City know that these are  
8 the people of -- the property owner and the permittee.

9 Q Thank you.

10 So I assume you're very familiar with San Diego  
11 Municipal Code and ordinances. Correct?

12 A To some extent, I'm familiar.

13 Q To some extent.

14 Well, as they relate to marijuana law and  
15 processing of CUPs specifically.

16 A I do. But I still do refer to the Municipal  
17 Code.

18 Q Yes. I mean, they are very lengthy. So that  
19 only makes sense.

20 Are you familiar with a change to the City --  
21 the San Diego City Ordinance 20990 -- or 200797? It was  
22 passed in -- it was amended and passed in February 22nd,  
23 2017.

24 A Is that the -- what -- do you have a title for  
25 that ordinance? Is the one that established the  
26 marijuana outlet use?

27 Q That's precisely what it is.

28 A Okay.

1 Q Yes. That's where the ordinance changed  
2 from -- changed CUP applications for marijuana consumer  
3 cooperatives to the broader term of marijuana outlets.  
4 Are you familiar with that?

5 A Yes.

6 Q So within that ordinance, it does specifically  
7 say that any dispensary or retail licensing requirements  
8 are going to be pursuant to the California Business and  
9 Professions Code. Correct?

10 A The state requirements.

11 Q Yes. So, basically, all the ordinances will  
12 be -- they'll refer to the California Business and  
13 Professions Code when it comes to licensing. Correct?

14 A I don't handle the state licensing  
15 requirements. So --

16 Q But it does refer you to the Business and  
17 Professions Code of California. Correct?

18 A If that's what it says in the ordinance, then  
19 yes.

20 Q Is it your understanding that Mr. Geraci, who  
21 is sitting before you, was in fact attempting to acquire  
22 this CUP on 6176 for himself?

23 MR. TOOTHACRE: Calls for speculation, your  
24 Honor.

25 THE COURT: Overruled.

26 THE WITNESS: I don't -- I don't have an answer  
27 for that question.

28

1 BY MR. AUSTIN:

2 Q Is that because his name does not appear  
3 anywhere in any of the applications for the 6176  
4 property?

5 A That -- that is correct.

6 Q Did you ever have any email communications  
7 directly with Mr. Geraci?

8 A I don't recall.

9 Q Do you recall any phone conversations with  
10 Mr. Geraci or sit-down meetings?

11 A I don't -- I don't recall phone conversations  
12 or sit-down meetings.

13 Q Looking at Mr. Geraci now, do you -- do you  
14 believe you've ever met this man?

15 A I don't believe so.

16 Q If he were attempting to acquire a CUP using  
17 his secretary as a proxy without ever disclosing his  
18 name, does that seem like it would be a violation of  
19 San Diego law and California state law?

20 MR. TOOTHACRE: Argumentative, your Honor.

21 THE COURT: Sustained.

22 BY MR. AUSTIN:

23 Q Essentially, anyone with an ownership or  
24 financial interest in a marijuana outlet is supposed to  
25 be disclosed to the City. Correct?

26 A You know, looking at the ownership disclosure  
27 statement, it's the property owner and then also a  
28 tenant/lessee would have to be identified.



1           Q     Right. And that is like an introductory  
2 application form.

3                     But are you familiar with the California  
4 Business and Professions Code?

5           A     No.

6           Q     Okay. Do you know of any situation where  
7 someone with previous sanctions against them for illegal  
8 cannabis principals would be barred from acquiring a  
9 marijuana outlet CUP?

10                    MR. TOOTHACRE: Vague and ambiguous and assumes  
11 facts, your Honor.

12                    THE COURT: Overruled.

13 BY MR. AUSTIN:

14           Q     That means you can -- you can answer.

15           A     Could you -- I'm sorry. Could you repeat the  
16 question?

17           Q     Yeah. Absolutely.

18                    Is it your understanding that if someone had  
19 been sanctioned for illegal cannabis dispensary  
20 activity, is it your understanding that they would be  
21 barred from acquiring a CUP in San Diego?

22           A     I'd have to refer to the Municipal Code. I  
23 believe there may be a section in there once you have a  
24 conditional use permit, you'd have to go through a  
25 background check process.

26           Q     Okay. Do you know what that background check  
27 process entails?

28           A     It's a LiveScan and also specific forms that

1 need to be completed, specific City of San Diego police  
2 forms that need to be completed. And it's processed by  
3 the San Diego Police Department.

4 Q How many CUPs are allowed in the City of  
5 San Diego?

6 A CUPs for --

7 Q Marijuana outlets.

8 A Four per council district.

9 Q And how many council districts are there?

10 A There's nine. So 36 total.

11 Q So 36 total.

12 Would it be fair to say that these are  
13 competitively sought after?

14 A Due to the limit, yes.

15 Q Yes. Do you know how many CUPs have been  
16 granted for marijuana outlets in San Diego?

17 A Total count, not off the top of my head. I  
18 couldn't say.

19 Q Approximately would you say 20, 25, maybe 30?

20 A Maybe 20.

21 Q Maybe 20. So perhaps 16 are still available?

22 A Yeah. Again, I -- I have that data. Just that  
23 data isn't with me.

24 Q No problem.

25 Are you aware of how many CUPs are being  
26 processed right now for marijuana outlets in the DS --  
27 in your -- your department?

28 A Maybe about two or three.

1 Q Two or three.

2 So the reason that there's 10 available slots  
3 that are not being processed currently, is that because  
4 the restrictions are so difficult to overcome?

5 A I can't answer that. I don't know.

6 Q In regards to the 1,000-foot radius, the  
7 proximity to schools, churches, daycare centers, et  
8 cetera, does that exclude most properties from being  
9 eligible for a CUP?

10 A Again, I can't answer that, but those  
11 restrictions do exist.

12 Q Well, in your -- in your experience, has that  
13 created a lot of difficulty in people acquiring the  
14 CUPs?

15 A Most of the applications that are submitted,  
16 they are in compliance with the separation requirements.  
17 There may have been a few, less than a handful, that  
18 have been denied because the separation requirements  
19 have not been met.

20 Q Is it your understanding that marijuana outlets  
21 are very profitable?

22 A I -- I can't answer that. I don't --

23 Q That's fine.

24 So in some of the emails that we saw, Darryl --  
25 or, I mean -- I apologize -- Mr. Cotton, he was  
26 inquiring about having a CUP in his name on the 6176  
27 property. Correct?

28 A I believe he was requesting to be able to

1 submit another application on his property.

2 Q So even though it was the same property, the  
3 reason he was not able to do so was the 1,000-foot  
4 separation requirement?

5 A He was able to process -- submit an  
6 application. It's just that once one got approved, the  
7 other one would have to be withdrawn because it would be  
8 done in violation of the Code.

9 Q So, essentially, it would be a race, a race to  
10 the finish?

11 A Yeah. I mean, whoever that -- has an approved  
12 CUP, the other one would have to be withdrawn.

13 Q And because it's the same property, I think it  
14 would be fair to assume a lot of the information that  
15 would need to be submitted would be exactly the same for  
16 the second CUP, correct, as far as --

17 A The submittal requirements are the same for a  
18 conditional use permit.

19 Q Okay. But would someone submitting a second  
20 CUP on the same property, would they be able to  
21 piggyback off the first CUP and basically just take  
22 their information and just resubmit it under their name?

23 A However they want to do it, they still have to  
24 provide the same submittal requirements.

25 Q Is any preferential treatment given to whoever  
26 applies first?

27 A No.

28 Q Okay. If someone did try to do -- try to

1 submit a second CUP on the same property, what types of  
2 information do you think would slow down the second  
3 party the most?

4 A I can't answer that question.

5 Q Nothing jumps out at you as, like, it would be  
6 a hurdle that would be exceptionally difficult to  
7 overcome for -- for a second person on the same  
8 property?

9 A The project would be a separate application and  
10 reviewed, as would any other application be reviewed.

11 Q How long does the review process ordinarily  
12 take?

13 A I believe for CUP, it's 10 working days.

14 Q Oh. For the review. In order to be approved,  
15 how long does that typically take, in your experience?

16 A It -- it varies.

17 Q What's the fastest you've seen?

18 A I really can't give you a date, but typically  
19 if you look at our information that's available on the  
20 website, discretionary applications can take a minimum  
21 of six months to over a year.

22 THE COURT: All right. Counsel, we're going to  
23 stop for our noon recess. We're going to be in recess  
24 now until 1:30. Do not form or express an opinion or  
25 discuss the case until deliberations. We'll be in  
26 recess until 1:30 now.

27 Ma'am, can you wait just one moment. Let them  
28 get out.

1 All right. The jury has left the room. I  
2 didn't mean to interrupt you, but I wanted to let them  
3 go. Let them step down.

4 All right. Counsel, I'll see you back at 1:20.  
5 (Lunch recess from 11:59 a.m. to 1:21 p.m.)

6 THE COURT: So let's take stock of where we  
7 are, Counsel. This case is a little bit unusual for a  
8 number of reasons. As I had mentioned at the beginning  
9 of the morning -- or the beginning of the day, nobody  
10 designated expert witnesses. Each of you have taken  
11 turns eliciting opinions that strike the Court as expert  
12 in nature, but there have been no objections on that  
13 issue.

14 But near the end of your examination, Counsel,  
15 of -- let's see. Was it Ms. --

16 MR. AUSTIN: Tirandazi.

17 THE COURT: -- Tirandazi, you began to ask her  
18 a series of opinions which seem to me as if you were  
19 asking her to address legal opinions. I'm not so sure I  
20 heard that objection, but I began sustaining them on  
21 other grounds because I found the -- that portion of  
22 your examination to be objectionable. But I wasn't sure  
23 where you were headed with the balance of what you have  
24 left with Ms. Tirandazi -- Tirandazi. I'm sorry.

25 So how much time do you have left on your  
26 cross?

27 MR. AUSTIN: Five minutes, your Honor.

28 THE COURT: All right. And an equal if not

1 lesser amount of time on redirect?

2 MR. TOOTHACRE: Not at the moment, your Honor.  
3 But I would like to raise with the Court Mr. Hurtado is  
4 next, and I want to make sure counsel has advised  
5 Mr. Hurtado of the in limine rulings.

6 THE COURT: Which one do you have in mind?  
7 Because I -- I can't -- which one do you think applied?

8 MR. TOOTHACRE: The conspiracy one. He's a big  
9 conspiracy person. He testified as to Mr. Cotton's  
10 heart attack, which has been excluded.

11 THE COURT: Now, this was information you  
12 elicited at a deposition?

13 MR. TOOTHACRE: Yes. I just want to make sure  
14 he's been advised.

15 THE COURT: Depositions, sometimes you get  
16 information that might not otherwise be elicited on  
17 direct.

18 So, Counsel, you're mindful of the Court's in  
19 limine rulings. This is your witness. Bear that in  
20 mind. And just raise the objections.

21 MR. TOOTHACRE: I will.

22 THE COURT: I'll deal with that. It's a little  
23 unusual that one side who may call a witness will  
24 estimate up to a couple hours and the other side will  
25 say it's going to be significantly, if not dramatically,  
26 shorter because of things that you all know that I don't  
27 know.

28 So is Mr. Hurtado going to be your last witness

1 of the day?

2 MR. AUSTIN: That's the plan for the day,  
3 because then -- then the plan is Bartell in the morning  
4 and then Mr. Cotton.

5 THE COURT: Okay. So what we'll do is after  
6 we're done with the last of our witnesses, which sounds  
7 like it will be Hurtado, we'll let the jury go. And we  
8 may have some things that we'll bring up.

9 The deeper I dig into your proposed  
10 obstructions, Counsel, given the evidence that I'm  
11 hearing, I -- I'm developing a lot of questions about  
12 some of these instructions. For the time being, I'm  
13 erring generally on the side of including them. But  
14 we'll have that discussion Wednesday afternoon, and if  
15 necessary, Thursday morning.

16 All right.

17 MR. WEINSTEIN: Your Honor --

18 THE COURT: Do we have our jury?

19 THE BAILIFF: Yes, your Honor.

20 MR. WEINSTEIN: May I raise one issue?

21 THE COURT: Sure.

22 MR. WEINSTEIN: This relates to the expert  
23 opinion issue. We've never gotten to discussion of the  
24 lodgement that was made, which I've been questioned that  
25 it's formulated or based on the improper application of  
26 the law. I've reviewed those materials. I don't think  
27 they stand for them.

28 So I have questions being asked under the



1 supposition that these code sections mean something, and  
2 I think they don't mean what is being implied in the  
3 questions. And I know Ms. Austin responded to one of  
4 them. And I don't know that it's going to come up with  
5 Ms. Tirandazi. But I've reviewed those Code sections  
6 and the Business and Professions Code sections that have  
7 been referred to. I'd like to at least go on the record  
8 as to why I don't think what counsel is arguing is a  
9 correct statement of the law.

10 THE COURT: Do you need to do that now, or can  
11 we wait until the end of the day?

12 MR. WEINSTEIN: We can wait if it's not going  
13 to come up with Ms. Tirandazi.

14 THE COURT: You're talking about the two civil  
15 judgments against Mr. --

16 MR. WEINSTEIN: Yes. But it's beyond that.  
17 One argument -- it started out as an argument about the  
18 civil judgments, which on their face, don't bar  
19 Mr. Geraci from operating a legally permitted --

20 THE COURT: I don't -- I tend to agree with  
21 you. I did not see any specific prohibition against  
22 Mr. Geraci in the future involving other properties  
23 assuming he plays by the rules from barring him from  
24 being able to obtain a permit.

25 MR. WEINSTEIN: Right. So then the follow-on  
26 argument that I think is being made is that he's not  
27 eligible for a CUP because of the Code sections that  
28 were cited, in particular Business and Professions Code

1 Section 26057, which deals with -- it's permissive. And  
2 it deals with a state license.

3 And the argument is bootstrapping it to say  
4 that it could somehow be a basis for not making him  
5 eligible for a CUP. And I think that's just an  
6 incorrect statement of the law.

7 THE COURT: All right.

8 MR. AUSTIN: He would be correct pre-2017, but  
9 in 2017, the San Diego Municipal Code adopted a Business  
10 and Professions Code, which I feel is --

11 THE COURT: Here's where, again, why this case  
12 is unusual in the Court's experience. Did you file a  
13 trial brief, Counsel?

14 MR. AUSTIN: I did not, your Honor.

15 THE COURT: So these authorities that you all  
16 are -- if you will, and I'm trying not to be flip or  
17 pejorative -- or that you're presenting with me, that  
18 you're throwing at me for the first time, have never  
19 been reflected in a brief that I can review, and if  
20 necessary, do some of my own research. You're bringing  
21 them up in part during an examination of the witnesses  
22 and in part in argument when we have a few moments  
23 outside the presence of the jury. I have no idea  
24 whether these authorities support the position either  
25 one of you are advocating.

26 So the usual process is I get a brief, I have a  
27 chance to review it, and then I entertain argument at  
28 appropriate times. That's not happening at all in this

1 instance.

2 So for the time being, I'm tending to agree  
3 with the plaintiff's side without the defense having  
4 given me something I can look at and absorb.

5 Madam Deputy -- Ms. Tirandazi, can I ask you to  
6 retake the witness stand.

7 Counsel, good to see you, by the way.

8 And Madam Deputy, bring in the jury.

9 All right. I just got back from a presentation  
10 by a bunch of judges with a room full of judges. And  
11 one or more of them kept not turning their cell phone  
12 off. Can you believe it? I thought of that as I saw  
13 one of you reaching for your cell phone to make sure you  
14 turned it off. I'm not suggesting that somebody has  
15 failed to do that in the slightest. You're better  
16 behaved than that room full of judges I just left.

17 Thank you very much. So we've got all of our  
18 jurors present and accounted for.

19 Counsel, continue your examination of  
20 Ms. Tirandazi.

21 Welcome back, ma'am. You understand you're  
22 still under oath?

23 THE WITNESS: Yes.

24 THE COURT: Thank you very much.

25 Whenever you're ready, Counsel.

26 MR. AUSTIN: All right. Thank you.

27 BY MR. AUSTIN:

28 Q Good afternoon again.

1 A Good afternoon.

2 Q Are you familiar with Cherlyn Cac?

3 A Yes.

4 Q She works under you. Correct?

5 A No, no longer. She did at one point but not  
6 anymore.

7 Q Okay. So she was No. 2, and you're No. 3. Has  
8 she changed jobs within the department?

9 A She did. She transferred to a different  
10 department, yes.

11 Q Okay. To your knowledge, was she supervising  
12 the CUP of 6176?

13 A Yes.

14 Q Do you know if she was also supervising the  
15 project, the CUP on 6220 Federal Boulevard?

16 A Was that the second application?

17 Q Yes. The second application with the --

18 A I believe so, yes.

19 THE REPORTER: Can the reporter hear the end of  
20 the question, please, due to the overlap.

21 MR. AUSTIN: Within a thousand feet.

22 THE REPORTER: Thank you.

23 BY MR. AUSTIN:

24 Q So your understanding of the San Diego  
25 Municipal Code is that no one is allowed to have a CUP  
26 within 1,000 feet of a -- of any public park, church,  
27 childcare center, playground, library, or school.  
28 Correct?

1 A Correct.

2 Q Okay. Are you aware of any of those,  
3 specifically, a childcare center, within 1,000 feet of  
4 the, 6220 CUP application?

5 A Those are specific project questions, and I  
6 don't recall.

7 Q Okay. So if there was a licensed facility  
8 within 1,000 feet, a CUP on that property would  
9 absolutely be barred. Correct?

10 A It would -- it would not comply with the  
11 separation requirement, and, therefore, the findings to  
12 support the CUP could not be made.

13 Q Is there a specific definition for a licensed  
14 childcare facility?

15 A I believe it's defined in the Code.

16 Q Do you -- do you know the difference between a  
17 childcare facility that would qualify and one that would  
18 not?

19 A I'd have to refer to the Code.

20 Q Okay. So you don't know anything off the top  
21 of your head on --

22 THE REPORTER: I'm sorry, Counsel, was there --  
23 anything off the top of your head on that -- can I hear  
24 again, please.

25 THE WITNESS: No.

26 THE REPORTER: Can I hear the end of the  
27 question?

28 MR. AUSTIN: I said anything off the top of

1 your head that would disqualify you.

2 THE REPORTER: Maybe we just need to allow some  
3 space between the question and your answer.

4 THE COURT: Counsel, let's start again. Ask  
5 the first question.

6 MR. AUSTIN: Re-ask the question, your Honor?

7 THE COURT: I'm sorry. Just start again. Ask  
8 a question.

9 BY MR. AUSTIN:

10 Q Off the top of your head, is there a difference  
11 between a licensed childcare facility that the DSD would  
12 allow -- or would consider a proper childcare facility  
13 versus one that would not qualify under DSD regulations?

14 A So we look at those uses, based on how they're  
15 defined in the Municipal Code. I'd have to look at the  
16 Municipal Code on this specific question.

17 Q Understood.

18 If a project -- if a CUP application were  
19 approved and it can be shown that they were in  
20 1,000 feet radius of the childcare facility, what would  
21 the process be? Would they be disqualified immediately,  
22 or something else?

23 MR. TOOTHACRE: Relevance, your Honor.

24 THE COURT: Sustained.

25 BY MR. AUSTIN:

26 Q Is there any exception that DSD would make for  
27 someone who does not comply within the 1,000-foot radius  
28 of the childcare facility?

1           A       The project would have to comply with the  
2 Municipal Code, including the separation requirements.

3           Q       Okay. Thank you.

4                    So earlier, you stated that Mr. Cotton wanted  
5 to have his name either added on to the CUP application  
6 on his property or have Mr. -- not Mr. Geraci -- but,  
7 rather, Rebecca Berry's name removed. Is that correct?

8           A       I believe he wanted to process his own  
9 conditional use permit application.

10          Q       Okay. So as the land owner of the 6176  
11 property, did he have the right to have the CUP  
12 application removed?

13          A       Yes. But both the property owner and the  
14 applicant would have to --

15          Q       So --

16          A       -- request the withdrawal.

17          Q       Okay. So it would take both? It would take  
18 two parties, unless they're one and the same?

19          A       That is correct.

20          Q       Okay. So the property owner by himself would  
21 not have the right to cancel the CUP on his own  
22 property?

23                   MR. TOOTHACRE: Misstates the testimony, your  
24 Honor.

25                   THE COURT: Overruled.

26                   THE WITNESS: If the CUP includes a -- an  
27 applicant that is different than the property owner,  
28 then both would have to agree to withdraw the CUP

1 application.

2 BY MR. AUSTIN:

3 Q Okay. Thank you.

4 One final line of questioning. As far as the  
5 geotechnical investigations or soils reports, as they  
6 have been called, how -- how is that -- no. Let me  
7 rephrase that.

8 Can one neighboring property use another  
9 neighboring property's prior soils reports to compare  
10 their property if they're within a close proximity?

11 A I'm not the subject matter expert on that.  
12 That's a geology question.

13 Q All right. Okay. Well, would you happen to  
14 know, like, if you're using a comparable soils report,  
15 do you know the age that would be allowed for a  
16 comparable soils report?

17 MR. TOOTHACRE: Foundation, your Honor.

18 THE COURT: Sustained.

19 BY MR. AUSTIN:

20 Q Do you know anything about soils reports, or is  
21 that just completely outside of your field?

22 A It's basically LDR Geology's responsibility to  
23 review those documents and determine as to whether they  
24 can accept it or not for purposes of the environmental  
25 review of the project.

26 Q Okay. So, to your knowledge, at the initiation  
27 of the CUP application for 6176, while you were still  
28 the project manager, no acceptable soils report was



1 submit within the first six months. Correct?

2 A I don't recall.

3 MR. AUSTIN: Okay. No further questions.

4 THE COURT: All right. Redirect?

5 MR. TOOTHACRE: No, your Honor.

6 THE COURT: All right. May Ms. Tirandazi be  
7 excused?

8 MR. WEINSTEIN: Yes, your Honor.

9 THE COURT: Counsel?

10 MR. AUSTIN: Yes, your Honor.

11 THE REPORTER: And may the reporter request, if  
12 we don't already have one, a business card from Ms.  
13 Tirandazi's counsel?

14 THE COURT: Counsel, can you leave one extra  
15 one behind, please. You can leave it with my deputy.

16 All right. Counsel, am I correct that that's  
17 your last witness for the day?

18 MR. TOOTHACRE: Yes, your Honor, subject to  
19 Mr. Bartell.

20 THE COURT: So, folks, the plaintiffs have one  
21 more witness to call during their case in chief, but  
22 he's not available until the morning. His name is Jim  
23 Bartell. He'll be arriving first thing tomorrow morning  
24 at 9 o'clock. And that, as I understand it, will be the  
25 Plaintiff, Mr. Geraci's last witness.

26 So what we're going to do is interrupt the  
27 Plaintiff's case in chief, and the defense will now call  
28 one of its witnesses, the name of whom is, Counsel?

1 MR. AUSTIN: Joe Hurtado.

2 THE COURT: All right. Is he out in the  
3 hallway?

4 MR. AUSTIN: He should be.

5 THE COURT: Madam Deputy, if you could retrieve  
6 Mr. Hurtado.

7 THE BAILIFF: Yes, your Honor.

8 THE COURT: I think I -- I know I indicated  
9 this in the pre-instructions. Regardless of which party  
10 calls the witness, whether it happens to be the first  
11 witness or the last witness, folks, I'm going to urge  
12 you to keep an open mind, listen to this carefully as  
13 you did to the latter witnesses as you did to the first  
14 witnesses. You never know when you're going to hear  
15 something that might start to change the impressions  
16 that you've developed through this part of the case.

17 All right. Good afternoon, sir. If you could  
18 follow directions of my deputy and my clerk, please.

19

20 Joseph Hurtado,  
21 being called on behalf of the defendant/cross-complainant,  
22 having been first duly sworn, testified as follows:

23

24 THE CLERK: Please state your full name and  
25 spell your first and last name for the record.

26 THE WITNESS: Joe Hurtado, J-o-e H-u-r-t-a-d-o.

27 THE COURT: All right. Counsel, whenever  
28 you're ready.

1 (Direct examination of Joseph Hurtado)

2 BY MR. AUSTIN:

3 Q Good afternoon, Mr. Hurtado.

4 A Good afternoon.

5 Q Mr. Hurtado, what do you do for a living?

6 A Currently, I'm a transaction advisor.

7 Q How long have you been working in this field?

8 A On my own, since 2015, but I was originally a  
9 mergers and acquisition attorney. And then I left that  
10 to become a investment banker. So I'm been doing some  
11 kind of transactional legal advising since I graduated  
12 law school in 2009.

13 Q Where were you practicing law?

14 A I practiced law in New York. I was admitted to  
15 practice -- to the bar there.

16 Q I would like to ask you some more questions  
17 about your qualifications and educational background.

18 Did you attend college?

19 A Yes, I did.

20 Q Where did you go?

21 A Embry-Riddle Aeronautical University.

22 Q And you acquired a degree there?

23 A Yes.

24 Q What degree was that?

25 A Policy and management.

26 Q Where did you go after your undergraduate  
27 studies?

28 A I -- the university was in Arizona. And then I

1 came back to San Diego for about three or four years.

2 Q Okay. Is that where you attended law school?

3 A No. After coming back to San Diego for three  
4 or four years, I then went back to graduate school. And  
5 I went to New school of law in New York City.

6 Q After -- after attending NYU, what did you do?

7 A I clerked at a federal clerk -- at a federal  
8 courthouse, the Northern District of California.

9 Q Is that in San Francisco?

10 A Oakland.

11 Q Oakland?

12 A Yes.

13 Q What district is that?

14 A The Northern District, California.

15 Q Can you describe to the jury your duties and  
16 responsibilities as a law clerk.

17 A I would help the judge with every dispute that  
18 came in. You'd look at contract disputes like this, and  
19 you'd look at the arguments and write a memo. You'd say  
20 here's their argument, here's these arguments. Here's  
21 what the facts are, not what they say they are. And I'd  
22 make a recommendation. I'd break it down for her, and  
23 she would then --

24 THE REPORTER: I'm sorry, can the reporter hear  
25 again, a little slower, please.

26 THE WITNESS: I'm sorry. My judge would review  
27 the memo, and if she had questions or comments, I would  
28 then address them. If the facts and analysis were

1 straightforward, she would then follow through on that  
2 memo and turn it -- I draft it in a way where it would  
3 become basically easy for the judge to issue the order.  
4 Here's the facts, here's the law, here's the analysis,  
5 here's the conclusion.

6 BY MR. AUSTIN:

7 Q And how long did you do that for, Mr. Hurtado?

8 A I did that clerkship for one year.

9 Q Did you ever handle any breach of contract  
10 cases as a law clerk?

11 A Yes, I did. Many cases.

12 MR. TOOTHACRE: Relevance, your Honor.

13 THE COURT: Sustained.

14 BY MR. AUSTIN:

15 Q Okay. Would it be fair to say that as a law  
16 clerk, you were exposed to a multitude of different  
17 areas of law?

18 A Yes.

19 Q At some point, your clerkship ended. What did  
20 you do after that?

21 A I went to go work for Latham and Watkins in  
22 New York. It's usually ranged in the top 10 of all law  
23 firms in the country.

24 Q So it's a pretty large law firm?

25 A Yes.

26 Q Yes.

27 A At one point, it was the largest law firm in  
28 the world. It was the first law firm on record to make

1 \$2 billion in legal fees in one year.

2 Q Can you describe to the jury what your  
3 responsibilities while working at Latham and Watkins  
4 was?

5 A I was --

6 MR. TOOTHACRE: Relevance, your Honor.

7 THE COURT: Sustained.

8 BY MR. AUSTIN:

9 Q In order to -- hmm. Okay.

10 While at Latham and Watkins, what -- did you  
11 have, like, a specialty?

12 A I was a mergers and acquisitions attorney.

13 Q Can you describe to the jury what that is.

14 MR. TOOTHACRE: Same objection, your Honor.

15 THE COURT: Sustained.

16 MR. AUSTIN: Your Honor --

17 THE COURT: Counsel, this is a fact witness.

18 Let's move it ahead.

19 MR. AUSTIN: Okay.

20 BY MR. AUSTIN:

21 Q As an attorney, did you deal with drafting  
22 agreements?

23 A Yes.

24 MR. TOOTHACRE: Same objection, your Honor.

25 THE COURT: Sustained.

26 MR. TOOTHACRE: Motion to strike.

27 THE COURT: Motion to strike is granted.

28

1 BY MR. AUSTIN:

2 Q After leaving Latham and Watkins, did you go  
3 back to school?

4 A Yes. The -- first I left Latham and Watkins to  
5 go be an in-house investment banker for United Health  
6 Group. I spent three or four years doing investment  
7 banking work at United Health Group, doing financial  
8 analysis before I decided to leave basically the rat  
9 race. I had gone to New York. I had gone to  
10 San Francisco. I went to Minneapolis to the corporate  
11 headquarters of United Health Group. I got tired. So I  
12 came back to San Diego. And I enrolled in a master's  
13 program at the University of San Diego in real estate.  
14 I wanted -- maybe I should have brought it. Basically,  
15 I wanted to set up a small private, like, equity firm  
16 and just do basic real estate --

17 THE REPORTER: I'm sorry, can the reporter hear  
18 again, please, and slower. Just do basic real estate --

19 THE WITNESS: I'm sorry. I wanted to do some  
20 basic real estate investment, and I also had some ideas  
21 for home insurance. I thought getting a master's degree  
22 in real estate development from the University of  
23 San Diego would be a good segue into the real estate  
24 market.

25 BY MR. AUSTIN:

26 Q Okay. And while you were getting involved in  
27 real estate, did you also become acquainted with people  
28 in the cannabis industry?

1           A       Yes. That was in 2015, 2016, when Proposition  
2       64 was passed, which legalized marijuana outlets for  
3       profit, retail stores. There was a huge flurry of  
4       everybody then trying to find properties that qualified  
5       for a for profit marijuana business. And we discussed  
6       it a lot at the university in our real estate  
7       development classes. That's where -- that was the segue  
8       actually where I eventually met Darryl. He had a --

9           MR. TOOTHACRE: Your Honor, may we proceed  
10       question and answer, please.

11          THE COURT: I'm sorry. One moment. What's the  
12       objection?

13          MR. TOOTHACRE: May we proceed question and  
14       answer?

15          THE COURT: That objection is overruled. No  
16       speaking objections, Counsel.

17          Next question.

18       BY MR. AUSTIN:

19           **Q       So through your experience with people in**  
20       **real estate and the change of laws in cannabis, you've**  
21       **developed an interest?**

22           A       Yes, I did. It was a new market that had  
23       traditionally been a black market. And it was -- sorry  
24       about that. I'm forgetting the terminology. And I  
25       don't want to use vague terms. It was a brand-new legal  
26       market that didn't have players in it. So a lot of  
27       real estate, a lot of business, a lot of people trying  
28       to get involved. And because it was so new, it was



1 possible -- if you had nothing to do with the industry  
2 to find a property --

3 MR. TOOTHACRE: Nonresponsive, your Honor.

4 THE COURT: The objection is sustained.

5 BY MR. AUSTIN:

6 Q So, ultimately, in your experience and  
7 exposure, you became acquainted with my client,  
8 Mr. Cotton?

9 A Yes.

10 Q Is that correct?

11 How did -- how did you come to know Mr. Cotton?

12 A He has a what he calls 151 Farms at his  
13 property. He gives public tours there on growing  
14 medical cannabis. I went there. I took a tour. I met  
15 a lot of his patients, people who legitimately needed  
16 cannabis. So I took the tour. He was very informative.  
17 Taught me a lot about hydroponics, lighting.

18 MR. TOOTHACRE: Nonresponsive, your Honor.

19 THE COURT: At this point, sustained.

20 Next question.

21 BY MR. AUSTIN:

22 Q Approximately when did you meet Mr. Cotton?

23 A Mid 2016. Middle of 2016. Sorry.

24 Q Okay. I know that you developed a relationship  
25 with Mr. Cotton and things professionally changed over  
26 time. Could you describe for the jury generally each  
27 phase of your relationship. I know -- it's relatively  
28 short.

1 A I met him --

2 MR. TOOTHACRE: Relevance, your Honor.

3 THE COURT: Sustained.

4 BY MR. AUSTIN:

5 Q In what capacity did you initially know  
6 Mr. Cotton?

7 A We interacted first when I wanted to buy the  
8 property so that I could set up a marijuana outlet at  
9 the property.

10 Q As time went on, he had multiple offers. Is  
11 that your understanding?

12 A So after I initially wanted to buy the property  
13 and I did some pre- -- some preliminary due diligence,  
14 there was a zoning issue. So I would not -- I was not  
15 going to offer him any nonrefundable money or make a  
16 hard offer while I figured out and discovered whether I  
17 could actually resolve the zoning issue.

18 During that time, he had multiple other people  
19 making him offers, and he asked me to help him analyze  
20 those offers and whether he should take that -- those  
21 other offers or not.

22 So at that point, I was trying to buy the  
23 property --

24 MR. TOOTHACRE: Nonresponsive, your Honor.

25 THE COURT: At this point, sustained.

26 Next question.

27 BY MR. AUSTIN:

28 Q Did Mr. Cotton inform you that he had entered

1 into any type of agreements with anyone?

2 A Yes. He called me on November 2nd and told me  
3 that he had reached an oral agreement with Mr. Geraci  
4 and that he was going to get a 10 percent equity  
5 position, \$10,000 a month, and \$800,000.

6 Q So at that point, he -- he informed you of this  
7 to let you know that --

8 A Our negotiations were off because he had sold  
9 it. I was upset.

10 Q Okay. Understood.

11 At -- at any point, did Mr. Cotton say anything  
12 to the effect that he had changed his mind or that he  
13 wanted to --

14 A No.

15 Q -- renegotiate with you?

16 MR. TOOTHACRE: Hearsay, your Honor.

17 THE COURT: Sustained.

18 MR. TOOTHACRE: Move to strike the answer.

19 THE COURT: Motion to strike is granted.

20 BY MR. AUSTIN:

21 Q At some point, did either you or Mr. Cotton  
22 renegotiate -- no, no, no -- reinitiate conversation  
23 between the two of you?

24 A Yes.

25 Q Can you explain.

26 A He was worried that Mr. Geraci was not going --

27 MR. TOOTHACRE: It's hearsay, your Honor.

28 THE COURT: The objection is sustained.

1 Next question.

2 BY MR. AUSTIN:

3 Q Did Mr. Cotton contact you about being  
4 concerned about the deal that he thought he entered into  
5 on November 2nd?

6 A Yes.

7 Q Did -- did he tell you --

8 MR. TOOTHACRE: Hearsay, your Honor.

9 THE COURT: One moment.

10 MR. TOOTHACRE: Sorry.

11 THE COURT: He needs to finish asking the  
12 question.

13 MR. TOOTHACRE: Sorry, your Honor.

14 THE COURT: Premature.

15 MR. TOOTHACRE: Understood.

16 THE COURT: Counsel, please ask your question.

17 BY MR. AUSTIN:

18 Q Did Mr. Cotton express an interest to you and  
19 reinitiating negotiations with you?

20 A Yes. And we did.

21 Q Can you describe to us what was trying to be  
22 renegotiated.

23 A Yes.

24 MR. TOOTHACRE: This calls for hearsay, your  
25 Honor.

26 THE COURT: The objection is sustained.

27 BY MR. AUSTIN:

28 Q Was Mr. Cotton trying to sell you the property?

1 MR. TOOTHACRE: Same objection, your Honor.

2 THE COURT: Sustained.

3 BY MR. AUSTIN:

4 Q Did Mr. Cotton try to engage you as either an  
5 agent or a potential buyer for his property?

6 A Yes. And we did enter into an agreement.

7 Q Okay. And what agreement did you have with  
8 Mr. Cotton?

9 A We entered into a conditional agreement --

10 MR. TOOTHACRE: Relevance, your Honor.

11 THE COURT: Overruled at this point, subject to  
12 a motion to strike.

13 THE WITNESS: We entered into an agreement  
14 where I would help him find a buyer, and then I entered  
15 into another agreement with a buyer. I helped tran --  
16 helped him sell his property to another person. And  
17 that agreement was conditional on whether or not  
18 Mr. Geraci would provide the oral agreement that they  
19 reached in writing.

20 I did not believe --

21 MR. TOOTHACRE: Nonresponsive, your Honor.

22 THE COURT: At this point, sustained.

23 BY MR. AUSTIN:

24 Q Okay. So I would assume, going to your  
25 prestigious law school and having law firm experience,  
26 you would have enough understanding of contract, you  
27 would not have even engaged with Mr. Cotton if you felt  
28 you were unable to do so. Correct?

1 A Absolutely.

2 Q So when he's engaging you, you saw a business  
3 opportunity. Correct?

4 A Correct.

5 Q And what you saw was a good business  
6 opportunity. Correct?

7 A Yes.

8 Q So if Mr. Cotton was expecting to buy -- or, I  
9 mean, rather, sell his property to someone else through  
10 you, could you explain the capacity that or the nature  
11 of that contract.

12 A Yes. On March 15th --

13 MR. TOOTHACRE: I'm going to object on grounds  
14 of relevance, your Honor. And also leading.

15 THE COURT: The latter objection is overruled.  
16 It does call for a "yes" or "no" answer only.

17 But the objection on relevance is sustained.

18 BY MR. AUSTIN:

19 Q Ultimately, though, you did assist Mr. Cotton  
20 with transactional advice. Correct?

21 A Yes. He sold the property to somebody else.

22 Q Approximately when did you sell that property?

23 A We entered into an agreement on March 15th for  
24 the conditional purchase of the property, and the  
25 property was actually sold on March 21st. We executed  
26 the actual agreement for the purchase of the property on  
27 the same day.

28 Q Are you aware of a lawsuit filed against

1 **Mr. Cotton?**

2 A The very next day. We purchased the property  
3 and entered into an agreement on March 21st.

4 MR. TOOTHACRE: Nonresponsive, your Honor.

5 THE WITNESS: And the next day, he filed a  
6 lawsuit.

7 THE COURT: The objection is sustained as  
8 nonresponsive.

9 Next question.

10 BY MR. AUSTIN:

11 **Q When did you find out Mr. Cotton was being sued**  
12 **over the property?**

13 A The day after we executed the purchase  
14 agreement.

15 **Q And what day was that again?**

16 A We executed the purchase agreement for the  
17 property on March 21st, and Darryl called me the next  
18 day and said he had just been served -- or he sent the  
19 email --

20 MR. TOOTHACRE: Objection. Hearsay, your  
21 Honor.

22 THE COURT: All right. The point where the  
23 witness starts to talk about conversations with  
24 Mr. Cotton, that objection is sustained. That's  
25 hearsay.

26 BY MR. AUSTIN:

27 **Q After the lawsuit was filed against Mr. Cotton,**  
28 **were you made aware of the facts underlying that case?**

1 A I reviewed the actual documents --

2 MR. TOOTHACRE: It's --

3 THE WITNESS: -- the lawsuit. I reviewed --  
4 that's why I -- I'm a litigation investor for  
5 Mr. Cotton. I had financed this case because I had  
6 reviewed the documents.

7 MR. TOOTHACRE: Nonresponsive, your Honor. And  
8 relevance. And move to strike the answer.

9 THE COURT: The objection is sustained. The  
10 motion to strike is granted.

11 BY MR. AUSTIN:

12 Q So upon reading the lawsuit that was filed in  
13 this very Court, did you feel that opposing this lawsuit  
14 would be advantageous to you?

15 MR. TOOTHACRE: Relevance, your Honor.

16 THE COURT: Sustained.

17 BY MR. AUSTIN:

18 Q Have you read or reviewed any of the underlying  
19 documents upon which this lawsuit is based on?

20 MR. TOOTHACRE: Relevance, your Honor.

21 THE WITNESS: I've read them all.

22 THE COURT: Sustained.

23 BY MR. AUSTIN:

24 Q Have you ever read or reviewed any of the  
25 conversations between Mr. Geraci and Mr. Cotton?

26 MR. TOOTHACRE: Same objection, your Honor.

27 THE COURT: Sustained.

28



1 BY MR. AUSTIN:

2 Q Are you familiar with an attorney named Gina  
3 Austin?

4 A Yes.

5 Q Have you ever met her?

6 A Yes. On March 6th, 2017.

7 Q You remember that very clearly?

8 A Yes.

9 Q Do you remember having a conversation with her?

10 A Yes.

11 Q And what was that regarding?

12 MR. TOOTHACRE: That's going to be hearsay,  
13 your Honor.

14 THE COURT: Sustained.

15 BY MR. AUSTIN:

16 Q Did you have a conversation related to any  
17 contracts that Ms. Gina Austin was drafting for  
18 Mr. Cotton?

19 A Yes.

20 MR. TOOTHACRE: Leading and hearsay.

21 Move to strike the answer, your Honor.

22 THE COURT: The objections are overruled. It  
23 does call for a "yes" or "no" answer only. He said yes.

24 MR. TOOTHACRE: Okay.

25 THE COURT: Next question.

26 BY MR. AUSTIN:

27 Q What was the nature of that conversation?

28 MR. TOOTHACRE: Hearsay, your Honor.

1 THE COURT: Folks, I need to talk to the  
2 lawyers for just a moment. We'll be right back as  
3 quickly as we can.

4 If you want to stretch your legs, feel free to  
5 do so.

6 Counsel, may I see you at sidebar.

7 (Sidebar held and not reported.)

8 THE COURT: All right. Thank you for your  
9 patience, ladies and gentlemen.

10 All right. The objection on hearsay to this  
11 witness's conversation with Ms. Austin on March 6th,  
12 2017 is overruled.

13 Counsel, can I ask that you restate your  
14 question.

15 MR. AUSTIN: Could I ask the court reporter to  
16 read that back.

17 THE COURT: Do you have that last question,  
18 Madam Reporter, if so could you please reread it.

19 (The following was read by the reporter:

20 Q. What was the nature of that conversation?)

21 THE WITNESS: That -- I spoke with Gina on that  
22 day to determine, because she was Mr. Geraci's attorney,  
23 if Mr. Geraci and Mr. Cotton had entered into an  
24 agreement. She explicitly directly told me that they  
25 had not, that she was working on it. Because of what  
26 she told me, I then lined up somebody and gave some huge  
27 process to sell that property because --

28 MR. TOOTHACRE: Nonresponsive, your Honor.

1 THE COURT: Overruled.

2 THE WITNESS: -- because --

3 THE COURT: The question was what. Continue  
4 on.

5 THE WITNESS: Because an attorney who is very  
6 well known and is reputable and is in the news told me  
7 that Mr. Geraci and her had not entered into an  
8 agreement.

9 THE COURT: Well, let me stop. Now you're  
10 talking about what you thought she meant.

11 THE WITNESS: Okay.

12 THE COURT: I apologize.

13 THE WITNESS: I -- fair enough.

14 THE COURT: The question was what did you two  
15 discuss. If there was anything else --

16 THE WITNESS: I asked her.

17 THE COURT: If not, that's the end of the  
18 answer to the question.

19 THE WITNESS: I asked her directly if  
20 Mr. Geraci and Mr. Cotton had entered into a final  
21 agreement, and she said, no, that she was working on it.  
22 The next day, she sent -- or Mr. Geraci sent an  
23 agreement to Mr. Cotton.

24 THE REPORTER: I'm sorry, can I hear again?

25 THE WITNESS: There's one more critical fact,  
26 which is when I spoke to Gina on that day, I told her  
27 Mr. Cotton can't come to this event, but he's concerned  
28 that you've sent drafts, that Mr. Geraci has sent drafts

1 that don't include his 10 percent equity position. And  
2 she said, no, no, no. I'm aware of that. I'm going to  
3 take care of it.

4 And the next day, she sent a draft. But that  
5 draft provided for 10 percent profits, not 10 percent  
6 equity.

7 BY MR. AUSTIN:

8 Q Mr. Hurtado, can you explain to the jury why --  
9 why that matters.

10 A That is -- that is --

11 MR. TOOTHACRE: Objection, your Honor.  
12 Relevance.

13 THE COURT: The objection is sustained.

14 BY MR. AUSTIN:

15 Q All right. Is there a difference between 10  
16 percent profits and 10 percent equity?

17 A Absolutely. 10 percent equity means you own  
18 something.

19 MR. TOOTHACRE: Objection, your Honor.  
20 Nonresponsive.

21 THE COURT: Sustained.

22 BY MR. AUSTIN:

23 Q If a contract mentions an equity position, in  
24 your experience, does that typically indicate something  
25 along the lines of a joint venture?

26 MR. TOOTHACRE: Objection, your Honor.  
27 Relevance.

28 THE COURT: Sustained.

1 MR. TOOTHACRE: Foundation.

2 THE COURT: Sustained.

3 BY MR. AUSTIN:

4 Q On March 7th, when Mr. Cotton received the  
5 draft from the Austin Law Group, did you and Mr. Cotton  
6 go over that?

7 A Yes.

8 Q Okay. And that was March 7th. And you said on  
9 March 15th, you had preliminarily lined up a buyer for  
10 Mr. Cotton --

11 A Me and the buyer --

12 THE REPORTER: I'm sorry, with the overlap, can  
13 the reporter hear again?

14 BY MR. AUSTIN:

15 Q So on March 15th, you had lined up a buyer to  
16 purchase Mr. Cotton's property. Correct?

17 A Yes. On March 6th, I spoke to Gina. On  
18 March 7th, she sent a draft that did not reflect what we  
19 spoke. So on March 15th, I entered into an agreement  
20 with the individual who would eventually buy the  
21 property.

22 MR. TOOTHACRE: Nonresponsive, your Honor.

23 THE WITNESS: It's directly responsive.

24 MR. TOOTHACRE: Move to strike.

25 THE COURT: One moment. The objection is  
26 sustained.

27 The motion to strike everything after "Yes" is  
28 granted.

1 BY MR. AUSTIN:

2 Q So you had lined up a buyer on March 15th to  
3 purchase Mr. Cotton's property?

4 A Correct.

5 Q All right. And it wasn't until a week later,  
6 roughly, that a lot was filed. Correct?

7 A Correct.

8 Q What were the terms of the deal that your  
9 purchaser and Mr. Cotton came to?

10 MR. TOOTHACRE: Relevance, your Honor.

11 THE COURT: Sustained.

12 BY MR. AUSTIN:

13 Q So your current relationship with Mr. Cotton,  
14 is that of a litigation investor (sic), you said?

15 A Yes.

16 Q What does that mean?

17 A It means I pay for you and for other services  
18 so that he can defend himself in this court.

19 It also means that I previously hired other  
20 counsel that --

21 MR. TOOTHACRE: Objection. Nonresponsive, your  
22 Honor.

23 THE WITNESS: Move to strike.

24 THE COURT: Sustained. Motion to strike is  
25 granted.

26 BY MR. AUSTIN:

27 Q Have you previously financed any other  
28 attorneys for Mr. Cotton?

1           A     Yes.

2           Q     Okay.  And this litigation has been going on a  
3 little over two years now.  Correct?

4           A     Correct.

5           Q     So, obviously, litigation financing can be a  
6 very risky proposition.  Correct?

7                   MR. TOOTHACRE:  Relevance, your Honor.

8                   THE COURT:  Sustained.

9 BY MR. AUSTIN:

10          Q     Can you describe to the jury some of the --  
11 what due diligence did you conduct before deciding to  
12 finance Mr. Cotton's litigation?

13                   MR. TOOTHACRE:  Relevance, your Honor.

14                   THE COURT:  Sustained.

15 BY MR. AUSTIN:

16          Q     In your time -- in your time assisting  
17 Mr. Cotton, were you able to help him find any documents  
18 that were helpful to his case?

19                   MR. TOOTHACRE:  Relevance, your Honor.

20                   THE COURT:  Sustained.

21 BY MR. AUSTIN:

22          Q     So in your experience in law and real estate,  
23 are you familiar with any cannabis regulations such as  
24 Business and Professional Code 26057?

25          A     Yes.

26                   MR. TOOTHACRE:  Relevance, your Honor.  This is  
27 going to call for expert testimony.

28                   THE COURT:  Sustained.

1 BY MR. AUSTIN:

2 Q Is it your belief that assisting Mr. Cotton was  
3 to your financial benefit?

4 A Yes.

5 MR. TOOTHACRE: Relevance, your Honor.

6 THE COURT: Sustained.

7 BY MR. AUSTIN:

8 Q Would you have a continued relationship with  
9 Mr. Cotton if you weren't confident that you were doing  
10 the intelligent thing?

11 MR. TOOTHACRE: Relevance, your Honor.

12 THE COURT: Sustained.

13 BY MR. AUSTIN:

14 Q Would it be fair to say that you're intimately  
15 familiar with the aspects of Mr. Cotton and his  
16 relationship with Mr. Geraci. Correct?

17 A I've reviewed everything that they ever wrote  
18 and texted each other and every document filed in this  
19 case with every fact and every declaration made by  
20 Mr. Geraci and Mr. Cotton.

21 MR. TOOTHACRE: Belated relevance objection,  
22 your Honor.

23 THE COURT: The objection is overruled,  
24 belatedly.

25 MR. TOOTHACRE: Okay.

26 THE COURT: Motion to strike is denied.

27 MR. AUSTIN: I have nothing further, your  
28 Honor.



1 THE COURT: All right. Cross-examination. I'm  
2 sorry?

3 MR. TOOTHACRE: Just briefly, your Honor.

4 THE COURT: All right.

5 (Cross-examination of Joseph Hurtado)

6 BY MR. TOOTHACRE:

7 Q Mr. Hurtado, how long was your conversation  
8 with Ms. Austin?

9 A A minute.

10 Q In your deposition, did you testify it was 30  
11 seconds or less?

12 A Maybe. It may have been 30 seconds instead of  
13 a minute.

14 MR. TOOTHACRE: Okay. Your Honor, I'd like to  
15 read deposition testimony.

16 THE COURT: All right. Just give me one  
17 moment, please.

18 The deposition date, Counsel?

19 MR. TOOTHACRE: The deposition date is  
20 April 17, 2019 of Joe Hurtado.

21 THE COURT: Page and line?

22 MR. TOOTHACRE: The page will be 52, 11 through  
23 22.

24 THE COURT: All right. Any objection, Counsel?

25 MR. AUSTIN: No objection.

26 THE COURT: All right.

27 MR. TOOTHACRE: Okay. And what did you  
28 specifically ask her when you approached her?

1           Answer: Like, hey, I'm working with Darryl. I  
2 don't remember the exact wording. But it was Darryl is  
3 concerned that he hasn't gotten the written agreement.  
4 And her response was, like, I know. I know. I'm  
5 working on it. I'll have something to him. I don't  
6 want to say she said tomorrow, but she said soon or  
7 something. But the next day, he received the revised  
8 agreement that included the first -- for the first time  
9 a percentage of the profits.

10           Nothing further, your Honor.

11           THE COURT: Redirect?

12           MR. AUSTIN: No, your Honor.

13           THE COURT: All right. May Mr. Hurtado be  
14 excused?

15           MR. AUSTIN: Yes.

16           MR. TOOTHACRE: Yes, your Honor.

17           THE COURT: Thank you very much, Mr. Hurtado.

18           All right. Does that complete the witnesses  
19 that you have lined up for this afternoon?

20           MR. AUSTIN: For this afternoon, yes.

21           THE COURT: So, folks, as I indicated earlier,  
22 we're going to let you go a little bit earlier today. I  
23 can assure you we're not running behind. We might be  
24 plowing forward into Plaintiff's -- but, unfortunately,  
25 he's not available until tomorrow morning.

26           So we'll have Mr. Hurtado (sic), Mr. Cotton.  
27 And I fully expect we'll be done well before close of  
28 business tomorrow. And that will complete the

1 presentation of the evidence.

2 So we'll be in recess now until tomorrow  
3 morning at 9 o'clock.

4 Do not form or express an opinion or discuss  
5 the case until deliberations.

6 We'll see you tomorrow morning at 9 o'clock.

7 All right. The jury has left the courtroom.

8 Counsel, have a seat.

9 Now, we did go sidebar several minutes into the  
10 direct examination of Mr. Hurtado. And I want to make  
11 sure everybody has been given a chance to make a record  
12 of our discussion.

13 From the Court's perspective, I asked defense  
14 counsel almost for an offer of proof. It sounded to the  
15 Court like you were eliciting information which the  
16 Court did not think was relevant or may be calling for  
17 hearsay or may be calling for an expert opinion, which  
18 the other side was beginning to object to. It seemed  
19 prudent from the Court's perspective that we see where  
20 the defense was going with Mr. Hurtado. After hearing  
21 from both counsel, I did ultimately indicate I would  
22 overrule any objection to -- and allow Mr. Hurtado to  
23 testify to his conversation with Ms. Austin, which is  
24 what we did.

25 Beyond that, though, I pretty much gave you a  
26 heads-up that to the extent Mr. Hurtado wanted to talk  
27 about his relationship with Mr. Cotton or express legal  
28 opinions, I expected that objection to be well-taken.

1           On the other hand, I did indicate that if you  
2 asked him about any conversations he had with Mr. Geraci  
3 or members of Mr. Geraci's team, including but not  
4 limited to Ms. Austin, the Court would be inclined to  
5 overrule on the objections and allow him to testify.

6           So let's start with defense counsel. Make a  
7 record of anything you'd like to at our sidebar or  
8 otherwise.

9           MR. AUSTIN: I just wanted to point out that  
10 his conversation with Attorney Gina Austin was a very  
11 short, to the point conversation, wherein it was  
12 acknowledged that what Mr. Geraci alleges to have been  
13 the contract on November 2nd was never in fact  
14 contemplated by either of the parties to be the full --  
15 a fully integrated contract. And I think that itself  
16 was extremely dispositive towards this case, which, you  
17 know, there's no other writing that Mr. Geraci has to  
18 show that Mr. Cotton is in the wrong.

19           Every draft contract that the Austin Legal  
20 Group sent Mr. Cotton was more likely than not to  
21 include a majority of the terms that were actually  
22 contemplated from the beginning, just like the working  
23 documents which are Exhibits 10 and 11 where  
24 Mr. Cotton's first attempts at documenting what the  
25 contract was intended to be based off what could more  
26 likely than not be considered a meeting of the minds  
27 between Geraci and Cotton, whereas the November 2nd  
28 document, which is really nothing more than a receipt,

1 is completely devoid of the majority of terms that would  
2 be utilized for a multi-million-dollar contract, for the  
3 sale of a property that could be used for a CUP for a  
4 marijuana outlet.

5 THE COURT: Now -- thank you. But, again, the  
6 Court overruled the hearsay objection and allowed  
7 Mr. Hurtado to testify to his conversation with  
8 Ms. Austin. Now, though, legal relevancy to that will  
9 remain to be seen. But the Court didn't prevent you  
10 from asking about that.

11 So is there any other record that you'd like to  
12 make?

13 MR. AUSTIN: Well, what was disallowed was --  
14 and perhaps Mr. Hurtado should have been designated as  
15 an expert, because he is very knowledgeable in law and  
16 marijuana cannabis industry. But -- but he could have  
17 easily pointed to was with -- he could have explained it  
18 better than myself, actually, when it comes to the  
19 Business and Professions Code about what would in fact  
20 bar Mr. Geraci from owning a CUP application for a  
21 marijuana outlet, which essentially would make his whole  
22 claim for breach of contract void because if what he's  
23 trying to achieve is illegal, he shouldn't have a  
24 contract at all.

25 THE COURT: Well, I don't mean to sound like  
26 I'm arguing on behalf of the other side. But objections  
27 were being raised. Counsel, while some of these other  
28 folks who Plaintiff has called like Ms. Austin and

1 Mr. Schweitzer were testifying, had objections been  
2 interposed, you should fully expect that I would have  
3 treated your objections the same way as I'm treating  
4 Plaintiff's objections to Mr. Hurtado.

5 So there is a lot of knowledge by both people  
6 here, but if the rules aren't followed by designating  
7 expert witnesses and they're not being asked legal  
8 opinions, they probably get to testify. But there are  
9 certain things that did not appear to have been  
10 followed, which means that the objections can be -- are  
11 well-taken.

12 Before I hear from Plaintiff's side, is there  
13 anything else, Counsel, that you'd like to put on the  
14 record at least on this issue.

15 MR. AUSTIN: Not that I think of, your Honor.

16 MR. TOOTHACRE: I believe the Court accurately  
17 described the bench conference in the hallway, and I  
18 have nothing further to add.

19 THE COURT: Okay. So, Counsel, it's taken me a  
20 little longer than I expected, but I have drafted a set  
21 of proposed jury instructions. What I can assure you is  
22 I've looked at every one that you've proposed. Now, if  
23 you do not see it included in the draft that you'll be  
24 looking at later today, it means that, from the Court's  
25 perspective, there are one or more, if not multiple  
26 reasons why what you've given to me is objectionable.

27 Now, there may be some that could survive an  
28 objection, but at a minimum, they're incomplete. And I

1 don't know how to complete them. But there are some  
2 that were not completed, but they were completed enough  
3 that I've got to -- and based upon what I'm hearing from  
4 the evidence, I think that they could be given.

5 So with respect to those, I'm erring on the  
6 side of including them for the time being. But if they  
7 continue to be incomplete, they will not be given.

8 So what I'm imagining now is that you'll have a  
9 chance to look at the entire set tonight. Assuming we  
10 finish earlier than 4:30 tomorrow, we'll take up the  
11 instructions as soon as we excuse the jury.

12 And then -- and, hopefully, avoid you having to  
13 come in on Thursday morning.

14 Now, I also sent you the verdict forms  
15 yesterday, which, again, could be affected by motions  
16 that one or both of you decide to bring.

17 Let me go to Plaintiff's side. Did you have a  
18 chance to look at those?

19 MR. WEINSTEIN: I did. I have a couple of  
20 comments. Do you want them now, or tomorrow?

21 THE COURT: Why don't you make them, give them  
22 to me so I can begin thinking about them.

23 MR. WEINSTEIN: I've just marked it up. So --  
24 and they're pretty simple. So let me grab them. I will  
25 need to make copies. Can I --

26 THE COURT: Oh, I don't mean to put you to that  
27 task. I mean, are they substantive, or more grammatical  
28 in nature, or both? I don't know.

1 MR. WEINSTEIN: There's one that I think is a  
2 potential error, and then there are a couple I think it  
3 would just make sense if they're phrased a different  
4 way. But they're minor in my judgment.

5 CENTER: You know, let's tweak that tomorrow.

6 MR. WEINSTEIN: Okay.

7 THE COURT: What you should anticipate I will  
8 do is I'll put everything on the overhead, and as I'm  
9 hearing argument if I think modification should be  
10 made -- and I don't doubt that I made some mistakes --  
11 we can look at those things. And after a while, they  
12 all look alike.

13 So we'll make modifications at that time.  
14 We'll do it in real time.

15 So why don't you save that until tomorrow.

16 MR. WEINSTEIN: Fair enough.

17 THE COURT: Anything else from your side?

18 MR. WEINSTEIN: Yes. Your Honor, I don't know  
19 if it's appropriate now, but we -- it's been pointed out  
20 that we marked Exhibit 11, which is the ordinance but  
21 never offered it into evidence. And I don't know  
22 whether we do that outside the presence of the jury. It  
23 was marked and shown to Ms. Austin.

24 THE COURT: All right. Are you offering it  
25 now?

26 MR. WEINSTEIN: Yes.

27 THE COURT: So that's Exhibit 11?

28 MR. WEINSTEIN: Correct.



1 THE COURT: Just give me one moment.

2 Any objection to the admission of Exhibit 11?

3 MR. AUSTIN: No, your Honor.

4 THE COURT: Okay. Exhibit 11 will be admitted.

5 (Premarked Joint Exhibit 11, Draft Memorandum of  
6 Understanding between Cotton and GERL, dated  
7 9/24/16, was admitted into evidence.)

8 MR. WEINSTEIN: And then there's one other  
9 issue I just wanted the Court aware of. You'll recall  
10 we had one earlier sidebar about the damages summary,  
11 Exhibit 137. And I need to make sure that Mr. Austin  
12 and I talk about that because I reserved the ability to  
13 put the supporting documentation in, but I don't know if  
14 that's necessary if they're going to stipulate to the  
15 damages that are -- at least, the calculation of the  
16 damages.

17 THE COURT: I see 137 was admitted. What  
18 else --

19 MR. WEINSTEIN: So 138 I think may have been  
20 admitted as well, because it was Gina Austin.

21 THE COURT: It is -- or it has been, I mean.

22 MR. WEINSTEIN: 139 through 140 -- I think it's  
23 147 or 8, I have to look at my exhibit index. They're  
24 the supporting index and documentation that support the  
25 numbers for each of the different essentially vendors  
26 that were paid that are listed on Exhibit 137. So it's  
27 the backup.

28 THE COURT: 139 through what?

1 MR. AUSTIN: 148.

2 MR. WEINSTEIN: Let me just confirm. 139 to  
3 148. So it's through 148. Apparently, 147 has already  
4 been admitted as well. So --

5 THE COURT: Was one -- do you show 147 or 149  
6 admitted, Madam Clerk?

7 THE CLERK: I show 147 and 149 have already  
8 been admitted.

9 MR. WEINSTEIN: And 139 was the one that we  
10 talked about. I'm sorry. 138.

11 THE COURT: Right. That's been admitted.

12 MR. WEINSTEIN: Right. So what's left is  
13 essentially 139 through 146 and 148 that haven't been  
14 admitted that are backup documents.

15 MR. AUSTIN: I'm not going to argue over the  
16 total.

17 THE COURT: All right. Objections, if any?

18 MR. AUSTIN: It seems unnecessarily cumulative.  
19 I mean, I don't really -- I don't see the point in  
20 having, like, 30 pages of --

21 THE COURT: Cumulative does strike the Court.  
22 It is well-taken.

23 MR. WEINSTEIN: If there's going to be no  
24 attack, if you will, on how the numbers were arrived at  
25 and 137 is you know -- that's sufficient, as far as I'm  
26 concerned. I thought the purpose of the backup  
27 documentation was merely to support the summary. The  
28 Court has Evidence Code I think 1521 that's in the ATRO

1 where we're supposed to present a summary in lieu of  
2 supporting documentation. That was the intent. I would  
3 hope that could go in on its own, but I just want to --

4 THE COURT: Well, it did go in on its own.

5 MR. WEINSTEIN: Okay. I'm not -- I'm not  
6 planning -- I would not plan on showing or arguing those  
7 to the jury if there's no issue made of it in the  
8 defense case.

9 THE COURT: All right.

10 So are there any other objections?

11 MR. AUSTIN: Well, I honestly didn't take a  
12 calculator and double-check everything, but I do trust  
13 opposing counsel to do his summary correctly. So I  
14 submit to your discretion.

15 THE COURT: Are you going to argue the lack of  
16 corroboration of the numbers reflected in 137 and 138?

17 MR. AUSTIN: No.

18 THE COURT: All right. The Court accepts that  
19 representation.

20 The objection that 139 through 146 and 148 are  
21 cumulative is sustained.

22 (Premarked Joint Exhibits 139 through 146 and  
23 148 were not admitted over objection.)

24 MR. WEINSTEIN: Thank you.

25 THE COURT: Anything else from Plaintiff's  
26 side?

27 MR. TOOTHACRE: Not from me, your Honor.

28 THE COURT: How about the defense side?

1 MR. AUSTIN: I don't have any -- anything.  
2 Just a question about maybe timing.

3 THE COURT: About the timing?

4 MR. AUSTIN: Yeah, like when do you think  
5 closing statements are likely to occur?

6 THE COURT: Well, I sure wish we had more on  
7 Thursday or else we would be plowing forward on  
8 Thursday.

9 But it doesn't sound to me -- we've told the  
10 jury that you all won't be arguing until Monday. That's  
11 the 15th.

12 So what we'll do is -- Bartell will take how  
13 long in the morning?

14 MR. TOOTHACRE: Not very long, your Honor.  
15 Thirty minutes, maybe. Thirty, 40.

16 THE COURT: And then plaintiff will rest?

17 MR. TOOTHACRE: Yes, sir.

18 THE COURT: And the foundation of your contract  
19 theory is the November 2 agreement?

20 MR. WEINSTEIN: Yes, your Honor.

21 THE COURT: All right. And then your one and  
22 only witness -- well, I should say your last witness  
23 will be Mr. Cotton. And assuming that you start with  
24 him at or before the morning break, how much time do you  
25 think you'll need?

26 MR. AUSTIN: Well --

27 THE COURT: I'm not putting pressure on. I'm  
28 just trying to get an estimate.

1 MR. AUSTIN: Right. I don't want to rehash too  
2 much of what's already been gone over. I would estimate  
3 about an hour.

4 THE COURT: All right. And then you've already  
5 had one examination of him. How about -- I guess it  
6 would be cross-examination?

7 MR. WEINSTEIN: Right. I would not expect it  
8 to take as long as the direct, obviously. So it depends  
9 on what's been brought up, if anything new is brought  
10 up. I won't retread old ground.

11 But I did like kind of the schedule because we  
12 were concerned about whether we'd have enough time for  
13 jury instructions to discuss them. That gave us  
14 Thursday, if necessary. If not, we'll just come back  
15 Monday and argue.

16 THE COURT: Yeah.

17 MR. WEINSTEIN: Which is what we told the jury,  
18 which is what I think makes sense.

19 THE COURT: But based upon the timeline you all  
20 are estimating, it's possible that we could finish with  
21 the jury and let them go at or about noon.

22 MR. WEINSTEIN: It's possible.

23 THE COURT: Now, again what I want to  
24 emphasize, I am not -- Mr. Cotton is an obviously  
25 important witness. I'm not trying to put any pressure  
26 on the defense side to accelerate your examination  
27 because we want to get the jury out of here in a half a  
28 day and avoid them from coming back. If we can do so,

1 great. All right.

2 And then we'll spend as much time as we need to  
3 on Wednesday afternoon to finalize the instructions and  
4 verdict form.

5 Okay. Anything else from Plaintiff's side?

6 MR. WEINSTEIN: No, your Honor.

7 THE COURT: I'm sorry. I'm sorry. Defense  
8 side.

9 MR. AUSTIN: No, your Honor.

10 THE COURT: All right. So we do not have any  
11 8:30s tomorrow. So you'll have lots of latitude if you  
12 want to leave your materials where they are. No one  
13 else will be coming in the department between now and  
14 then.

15 So we'll be in recess now until tomorrow  
16 morning. Why don't you be here by 8:45, though.

17 MR. WEINSTEIN: Thank you, your Honor.

18 (The proceedings concluded at 2:40 p.m.)

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I, Margaret A. Smith, a Certified Shorthand Reporter, No. 9733, State of California, RPR, CRR, do hereby certify:

That I reported stenographically the proceedings held in the above-entitled cause; that my notes were thereafter transcribed with Computer-Aided Transcription; and the foregoing transcript, consisting of pages number from 1 to 166, inclusive, is a full, true and correct transcription of my shorthand notes taken during the proceeding had on July 9, 2019.

IN WITNESS WHEREOF, I have hereunto set my hand this 24th day of July 2019.



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Margaret A. Smith, CSR No. 9733, RPR, CRR

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