

BEFORE THE
ADMINISTRATIVE HEARING COMMISSION
STATE OF MISSOURI

4 DELTA EXTRACTION, LLC,)
5)
6 Petitioner,)
7) Case No. 23-0608
8 vs)
9)
10 DEPARTMENT OF HEALTH and)
11 SENIOR SERVICES,)
12)
13 Respondent.)

* * * * *

STAY HEARING
Monday, August 14, 2023
Administrative Hearing Commission
131 West High Street, Third Floor
Jefferson City, Missouri

* * * * *

16 BEFORE:

CAROLE L. ILES

Commi ssi oner.

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VOLUME I, PAGE(S) 1 THROUGH 159

23 REPORTED BY (WEBEX):

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1 I N D E X

2 W I T N E S S E S

3 ALL W I T N E S S E S: PAGE:

4 For Petitioner:

5 Brittany Kirkweg:
6 Direct Examination by MR. HATFIELD 23: 9
7 Jack Maritz:
8 Direct Examination by MR. HATFIELD 66: 7
9 Cross-Examination by MR. DOUGLASS 102: 21
10 Redirect Examination by MR. HATFIELD 144: 15
11 Recross-Examination by MR. DOUGLASS 155: 10
12 Rachael Herndon:
13 Direct Examination by MR. HATFIELD 162: 10
14 Cross-Examination by MR. DOUGLASS 181: 21

15 For Respondent:

16 Brittany Kirkweg:
17 Direct Examination by MR. DOUGLASS 210: 21
18 Voir Dire by MR. HATFIELD 227: 6
19 Direct Examination (Resumed) by MR. DOUGLASS 228: 11
20 Cross-Examination by MR. HATFIELD 239: 3
21 Redirect Examination by MR. DOUGLASS 253: 1
22 Recross-Examination by MR. HATFIELD 254: 1

23 For Petitioner:

24 Adam Weiss:
25 Direct Examination by MR. HATFIELD 259: 19

26 E X H I B I T S

27 NO. : DESCRIPTION: PAGE:

28 For Petitioner:

29 1 19 CSR 100:
30 Received 182: 25
31 2 Order of Immediate Suspension:
32 Received 182: 25
33 3 Email from Kirkweg Re: MAN22 Immediate
34 Order of Suspension Conference Call:

1		Received	182: 25
2	4	Conference Call Summary: Received	182: 25
3			
4	7	Arvida Labs Packing Slips: Received	184: 18
5	8	Extraction SOP: Received	94: 24
6			
7	9	Decarboxylation SOP: Received	94: 24
8	10	Falling Film SOP: Received	94: 24
9			
10	11	Wiped Film Distillation SOP: Received	94: 24
11	12	Email to Billyeu Re: MAN22 Hemp SOPs: Received	91: 24
12			
13	13	Industrial Hemp Processes: Received	91: 24
14	14	Dispensary Products on Hold: Received	176: 21
15			
16	15	MAN22 Products on Hold: Received	174: 10
17	16	MAN22 Products on Hold: Received	174: 10
18			
19	19	Encore Labs COA 2/14/2023: Received	184: 18
20	20	SC Labs COA 01Feb2023: Received	72: 5
21			
22	21	Encore Labs COA 2/14/2023: Received	72: 5
23	22	Green Precision Analytics COA Jun 07, 2023: Received	72: 5
24			
25	23	Green Precision Analytics COA Jun 07, 2023: Received	72: 5

1			
2	24	Green Precision Analytics COA May 24, 2023:	
3		Received	72: 5
4	25	Green Precision Analytics COA May 25, 2023:	
5		Received	72: 5
6	26	Green Precision Analytics COA May 12, 2023:	
7		Received	72: 5
8	27	Green Precision Analytics COA Mar 30, 2023:	
9		Received	72: 5
10	29	MAN22 Failed Testing Spreadsheet:	
		Received	85: 20
11	For Respondent:		
12	A	Photographs:	
13		Received	186: 15
14	B	Photographs:	
		Received	186: 15
15	D	Email - Security Patrol and Equipment Remediation Request:	
16		Received	186: 15
17	E	Email - MAN22 Immediate Order of Suspension Conference Call Summary:	
18		Received	186: 15
19	F	Email - MoCann Trade Industry alert Watch Out for Inversion:	
20		Received	186: 15
21	G	Email - Office Window Delete Request:	
22		Received	186: 15
23	H	Conference Call Audio Recording:	
24		Received	186: 15
25	R	Photographs:	
		Received	186: 22

1 P R O C E E D I N G S

2 COMMISSIONER ILES: The Commission calls the case
3 of Delta Extraction, LLC, vs. Missouri Department of Health
4 and Senior Services; Case No. 23-0608.

5 My name is Carole Iles. I am the Commissioner
6 assigned to hear this case. The Administrative Hearing
7 Commission is a neutral and independent tribunal, not
8 connected with the Department. And this hearing will be
9 conducted impartially and in a manner fair to all parties.

10 At this time I ask that the parties or their
11 attorneys identify themselves for the record.

12 For the Petitioner.

13 MR. PEARSON: Lowell Pearson for Husch Blackwell.

14 MR. HATFIELD: And, Your Honor, Chuck Hatfield and
15 Alix Cossette. We all represent the Petitioner.

16 COMMISSIONER ILES: Okay. For the Respondent.

17 MR. DOUGLASS: Josh Douglass, for the Respondent.

18 COMMISSIONER ILES: We're here this morning on
19 Petitioner's emergency motion for stay of Respondent's
20 August 2nd, 2023, order of immediate suspension of
21 operations.

22 And with respect to the stay, Petitioner, you'll
23 have the burden of proof by a preponderance of the
24 evidence.

25 The procedures governing this case are found in

1 Chapters 136, 536, not 136, sorry. That was the wrong
2 chapter. 536 and 621 of the Revised Statutes of Missouri,
3 and the Missouri Code of State Regulations, at
4 1 CSR 15-3.200 through 3.510.

5 These procedural rules include but are not limited
6 to the following: All parties will have a right to present
7 evidence, rebuttal testimony and present argument with
8 respect to the issues, and cross-examine witnesses.

9 The hearing is being recorded by a court reporter.
10 So it's important that all proper names and technical terms,
11 which I think there are several in this case, should be
12 spelled out, and only one person should speak at a time.
13 It's important to give verbal answers also, for those of
14 you who are testifying. You need to say yes or no in
15 response to a question, as opposed to simply shaking your
16 head.

17 We expect to prepare a transcript of this hearing,
18 and we can talk at the close of the evidence about a
19 briefing schedule, if you desire to submit briefs in this
20 case.

21 So, first of all, first question for you all: Is
22 everybody here, or is anyone appearing by WebEx?

23 MR. HATFIELD: Commissioner, for Petitioner, all
24 witnesses that we will need are here, if that's what you're
25 asking.

1 COMMISSIONER ILES: Yeah.

2 MR. HATFIELD: Yes, ma'am.

3 COMMISSIONER ILES: Okay, thanks.

4 How about for Respondent?

5 MR. DOUGLASS: Same for Respondent.

6 COMMISSIONER ILES: Okay, good, all right.

7 Well, I see we have a lot of people who are on the

8 WebEx. I guess this is a very interesting hearing. Hope

9 so.

10 Now, are there any preliminary matters we need to

11 discuss before proceeding with the case?

12 Petitioner, do you have anything?

13 MR. HATFIELD: We do not, Commissioner.

14 Petitioner is ready to proceed.

15 COMMISSIONER ILES: Respondent.

16 MR. DOUGLASS: I discovered over the weekend that

17 I had neglected to identify my affidavit that I had filed

18 with the Commission and served on counsel on Friday. I

19 have a substitute that is marked DHSS Exhibit R. Just for

20 the clarity of the record, I would ask to substitute this

21 version with the version that was filed on Friday.

22 COMMISSIONER ILES: So I don't understand what you

23 mean by: you didn't identify. It did not have a label on

24 it?

25 MR. DOUGLASS: It didn't have a label on it.

1 COMMISSIONER ILES: Okay. So we got it?

2 MR. DOUGLASS: Yes.

3 COMMISSIONER ILES: It was filed?

4 MR. DOUGLASS: Yes.

5 COMMISSIONER ILES: Okay. And did Petitioner get

6 it too?

7 MR. HATFIELD: We did, and we have no objection to

8 adding a label to it, Commissioner.

9 COMMISSIONER ILES: Okay, all right. I think that

10 that's fine.

11 Okay. As to the order of presentation, I assume

12 Petitioner will want to go first, since you have the burden

13 of proof, to be followed by Respondent, unless you all have

14 some other idea about that, okay. And do counsel wish to

15 present opening statements?

16 MR. PEARSON: Yes, Your Honor.

17 COMMISSIONER ILES: And how about you?

18 MR. DOUGLASS: Very briefly. Thank you.

19 COMMISSIONER ILES: Okay. We'll start with

20 Petitioner.

21 MR. PEARSON: May I approach, Your Honor? I have

22 a binder with exhibits for you.

23 COMMISSIONER ILES: Okay, sure.

24 MR. PEARSON: Thank you.

25 COMMISSIONER ILES: Are these all the same

1 documents that were prefilled?

2 MR. PEARSON: Yes.

3 COMMISSIONER ILES: Okay.

4 MR. PEARSON: And I'm only going to refer to
5 Exhibit 2 in the opening, Your Honor, which is a copy of
6 the rule. So I'm not going to get into the -- Exhibit 1.
7 Apologies, yeah.

8 So, Your Honor, just a little context here. Our
9 client, Delta Extraction, has a Missouri manufacturing
10 license in the cannabis world. And there are really
11 three types of licenses. There are cultivators,
12 manufacturers and dispensaries. So we're in the middle of
13 that chain.

14 Delta Extraction has been in this business since
15 the fall of 2021. They have never received a complaint
16 from the Department until the document that is the cause of
17 us being here today, the August 2nd suspension order.

18 The standard against which this is measured today,
19 and this is in the suspension order and also in the rules,
20 is found at 19 CSR 100-1.020(3)(G)(1). And if you want to
21 look at that while I speak about it for a moment, that's at
22 Exhibit 1, Page 7. And I'll give you a heads up as to
23 where. It's right at the bottom right corner of Page 7.

24 (Commissioner Iles nodded her head.)

25 MR. PEARSON: So that standard is that there is an

1 imminent threat to public safety.

2 MS. PAULA COLYER: Excuse me, Commissioner. We
3 can't hear anymore on WebEx.

4 (Off the record.)

5 COMMISSIONER ILES: I'm sorry about that,
6 Mr. Pearson. Technical difficulties.

7 MR. PEARSON: No problem. I think we were just at
8 the bottom of Page 7 of Exhibit 1. And the standard here
9 is that there must be an imminent threat to public safety.
10 And the rule goes on to list two examples: A credible
11 report, such as from law enforcement, that inversion is
12 occurring. And there are some other words there that I
13 have omitted. But inversion is the bringing into the state
14 of certain products from out of the state. And that will
15 be a big issue today.

16 And then the second definition of imminent threat
17 to public safety is a credible report that a facility's
18 practices are permitting marijuana product to enter the
19 system. And that's going to be important, too, because the
20 evidence is going to be that there is no marijuana product
21 that is being inverted into the system. And you'll hear
22 testimony on that as we go through.

23 So the Division of Cannabis Regulation claims that
24 it got a credible report from a trade association executive
25 and a credible report from an anonymous person, that we

1 don't know who it is. One issue is: Are either of those
2 credible, and will there be any evidence that will
3 establish that? We've not seen any. That's not been
4 shared with us to date. And I don't see how an anonymous
5 report can be deemed credible. So that's kind of the
6 basics.

7 I want to now talk a little bit about the time-
8 line here because I think it's important for Your Honor to
9 understand. So we received the order of suspension on
10 August 2nd. And that's Exhibit 2, and I won't refer you to
11 that yet because it's not been admitted, but it's been
12 filed.

13 So at that time we get a two-page document that
14 cites the rules and cites the constitution but doesn't tell
15 us any facts about what we did wrong, what we could do to
16 cure it or what really, in any detail, is the problem.
17 That document says there will be a phone call within
18 48 hours. That phone call actually occurred five days
19 later, on Monday, August 7th, despite our request that it
20 occur at first opportunity.

21 On that call of August 7th, Mr. Hatfield and I
22 both made multiple requests for further information. And
23 the standard answer was: The investigation is ongoing, and
24 we can't give you anymore information at this time. And I
25 specifically said: We respect that it's ongoing, but how

1 about you tell us what you know now. And they refused.

2 So we filed our motion for emergency stay, I
3 think, a day-and-a-half later. Finally, on Friday, we
4 received an affidavit; and on Saturday, an opposition, that
5 provides some information about the basis of what the
6 complaints are. But even those, still do not, in our
7 judgment, meet the due process standard, and certainly not
8 for invoking the immediate suspension on the 2nd.

9 The affidavit and the opposition talk about five
10 different incidents that the Department claims might have
11 been attributed to inversion. They pick their words very
12 carefully. They don't say that inversion occurred; they
13 say that inversion could have occurred.

14 The dates of those events are important.
15 December 21st, 2021; March 25th, 2022; November 11th, 2023,
16 that has -- we haven't gotten to that yet, so we're not
17 sure what date that's supposed to be. January 16th of
18 2023, and July 14th of 2022.

19 Now, remember what I said at the beginning of the
20 opening statement. Imminent threat to public safety is the
21 standard. The most recent of these events occurred in
22 January of this year. So why we have an imminent threat to
23 public safety almost two years after the first event and
24 six months after the last remains a mystery.

25 I want to give you just a very brief factual

1 context before I get to my last points, which is to explain
2 why we have a likelihood of success on the merits. So
3 you'll hear testimony that there are basically two product
4 lines at this facility in Franklin County. The Conte
5 line -- I think that's C-O-N-T-E -- and the Midwest Magic
6 line of products. And we're going to be talking today
7 almost exclusively about the Conte products.

8 So what the Conte product is, largely, is a
9 distillate, an oil, that Conte produce -- that is produced
10 in our facility. The way that this is done is: THC-A oil
11 is brought in, and some of that is brought in from out of
12 state. No question about that.

13 What is done is: that is distilled into THC
14 products. And it's important to note that THC is the
15 marijuana product that people -- well, to use a colloquial
16 term, gets you high. THC-A cannot do that. It has to be
17 converted to THC, in order to have the effect on the
18 consumer.

19 The source of this THC-A is hemp, not marijuana.
20 I'm going to explain to you, Your Honor, in just a minute
21 why that distinction is so important. But this process by
22 which THC-A is brought in and then -- hemp-based THC-A is
23 brought in and then converted to THC was well-known to the
24 Department for over a year.

25 We have worked with the Department. There are

1 emails and correspondence. In July of 2022, the Department
2 approved a document, which you'll see in evidence, a
3 standard operating procedure, about this processing of
4 hemp.

5 So, now, just for the last couple minutes here,
6 Your Honor, I want to talk about the regulations, to show
7 you why this process that I just described is fully legal
8 as of July 31st. So a little context here.

9 The regulations that were in place from
10 February 1st to July 31st are called the emergency rules.
11 The Department put those into place to implement the
12 recreational marijuana that was passed. Effective
13 August 1st, we have new rules.

14 So our position is that this process that I
15 described was fully legal until July 31st under these
16 emergency rules. And here's why. At 19 CSR 100-1.010(48)
17 -- and that is Petitioner's Exhibit 1, Page 5; and over on
18 the left side, you'll see (48). And there there's a
19 definition of marijuana. I'll give you a moment. Upper
20 left on -- I think I have the page right. 5?

21 COMMISSIONER ILES: Yes.

22 MR. PEARSON: Yeah. And the last sentence is
23 what's important. Marijuana does not include industrial
24 hemp as defined by Missouri statute, or commodities or
25 products manufactured from industrial hemp.

1 So hemp is not marijuana, as long as the hemp
2 meets the statutory definition. So what's that? That's at
3 Section 195.010(24). And I don't have that in the book for
4 you. But it defines industrial hemp. And I'll just read
5 it. I'll try and go slow so you can catch it.

6 Industrial hemp includes industrial hemp
7 commodities and products and topical or ingestible animal
8 and consumer products -- this is the important part --
9 derived from industrial hemp with a Delta-9 -- I'm going to
10 just spell this long word for you, if that's okay --
11 T-E-T-R-A-H-Y-D-R-O-C-A-N-N-A-B-I-N-O-L concentration of
12 not more than three-tenths of one percent on a dry weight
13 basis.

14 Okay. So if you meet that test, what you have is
15 industrial hemp, and what you have is not marijuana. Now,
16 this operating procedure that I described for you a moment
17 ago, which you'll hear testimony about, establishes an
18 internal procedure that hemp will only be used in the exact
19 measure that I just read from the statute. And that's the
20 document that the Department has known about for a year and
21 approved. So that's the first part of the rules that are
22 important.

23 One last point, and then I'll sit down. Until
24 July 31st, there was a rule that said any -- and same long
25 word. Do you want me to spell it again? I think it's

1 tetrahydrocannabinol, in a marijuana product manufactured
2 by a manufacturing licensee shall only be derived from
3 marijuana cultivated in Missouri by a licensed cultivator.

4 Hemp is where this product comes from. It's not
5 marijuana. So that rule, which is cited in the opposition
6 to our motion, doesn't apply. That rule was changed,
7 effective August 1st. And that new rule, I'd like to
8 direct your attention to Exhibit 1, Page 40. And I'll give
9 you a moment because I want you to see the text. So if you
10 go most of the way down the left side, Your Honor, and you
11 see Sub (E) there.

12 COMMISSIONER ILES: Yeah. I see it.

13 MR. PEARSON: This is the new rule, okay,
14 effective August 1st. And you'll note that after the un-
15 pronounceable long word, it says, such as THC-A, Delta-8,
16 or Delta-10.

17 So the Department changed its rule, effective
18 August 1st, for the first time, to expressly reference
19 THC-A. That was not in the rule under which we operated,
20 until July 31st. In response to this rule, Delta stopped
21 the process that I described. This hemp-based THC-A. But
22 our position is: it was fully able to do that prior to
23 August 1st.

24 So with that, Your Honor, I'll sit down and let
25 Mr. Hatfield present most of the case. But thank you for

1 indulging an opening statement, and I look forward to
2 working with you as a Commissioner. So, thank you.

3 COMMISSIONER ILES: Thank you. Wait. You just
4 said Mr. Hatfield.

5 MR. HATFIELD: So I'm going to handle the
6 presentation of evidence.

7 COMMISSIONER ILES: That's the end of the opening
8 statement.

9 MR. HATFIELD: Yeah. I wasn't sure if
10 Mr. Douglass wanted --

11 COMMISSIONER ILES: It wasn't a two-part opener,
12 okay.

13 MR. HATFIELD: No, ma'am. I wanted to make sure
14 if Mr. Douglass wanted to go now or wait.

15 COMMISSIONER ILES: Yes, sir.

16 Mr. Douglass, would you like to start, do your
17 opening now, or at the beginning of your evidence? Either
18 way works for me.

19 MR. DOUGLASS: Now is fine, unless Mr. Hatfield
20 has a supplemental opening.

21 MR. HATFIELD: I do not. I thought that was
22 excellent.

23 MR. DOUGLASS: Commissioner, thank you.

24 To call this an early on discussion about the
25 facts is an understatement. We're less than two weeks out

1 from the complaint. What we do know is that licensing laws
2 are for the express purpose of protecting the public.
3 There is no other reason to require businesses to have
4 licenses. In fact, Article XIV expressly references the
5 protection of public health by ensuring the safety of
6 marijuana and marijuana products as its purpose.

7 In Missouri, to manufacture marijuana products
8 that are intended to be consumed, specifically ingested by
9 consumers, licensees must comply with the constitution, and
10 they have to comply with the Department's regulation.

11 This is a highly regulated industry because of its
12 singular focus on safety. And, in fact, there's probably
13 just as many lawyers advising on compliance as there are
14 producers, because it is a highly technical area.

15 When the Department identifies a credible threat
16 of imminent harm, like it did here, it may immediately
17 suspend a license to figure out whether there is, in fact,
18 a threat. In fact, the regulations say the immediate
19 suspension lasts for as long as it takes to determine
20 whether or not the threat is actual or not.

21 Here we have a generalized notice from Andrew
22 Mullins, who is the Director of Cannabis Trade Association.
23 It was provided to the Department explicitly because of
24 concerns about inversion in the broader marketplace.

25 Mr. Mullins followed up later with an additional

1 solicitation, by an out-of-state producer, with an
2 additional concern about inversion in the use of
3 out-of-state distillates in Missouri products. THC from
4 out of state is prohibited. That cannot really be
5 disputed.

6 We also have a report from an anonymous source who
7 wished to remain anonymous because of fears of retaliation.
8 Our witness doesn't know who that person is. I don't know
9 who that person is. That is not the foundation for our
10 action. It is the Department's subsequent analysis of the
11 volume data from Delta Extraction that led to its
12 determination that an immediate suspension was appropriate
13 so that additional investigation could occur.

14 The numbers are spelled out in the affidavit and
15 in my brief that I filed on Saturday. It was important for
16 us to get that to both the Commission and to the Petitioner
17 before today's hearing. Are those all the numbers? I have
18 no idea. There's a lot of numbers out there. There are
19 probably millions of Metrc tags created over the course of
20 Delta Extraction's manufacturing career.

21 What we found and what we've itemized is instances
22 where a Metrc tag has increased, right? We have loaves and
23 fishes moments where 4 grams turns into 38,000 grams.
24 Whether that's an issue, we don't know yet. But we need to
25 figure it out because that is a clear indicator of an

1 additional substance being added to the THC which is being
2 tracked in Metrc.

3 There are also instances where four or five or
4 six months after a product is created, additional product
5 is added to the Metrc tag, with a note that it was just a
6 mistake. That is despite the fact that manufacturers are
7 required to conduct monthly audits of their inventory.

8 The regulations clearly define imminent threat as
9 applying exactly to what we have here, threats of
10 inversion, adding product to the regulated market after
11 testing. Clearly, the Department thinks that it will
12 ultimately prevail on the merits, right? Under the four-
13 prong test, we feel confident that as this proceeds we will
14 find more issues in Metrc, and discovery will show that
15 there is fire beneath the smoke.

16 More importantly, the public risk is paramount
17 here. The regulations exist for the sole purpose of
18 ensuring public safety. If there is, in fact, product
19 being added after testing, we cannot verify the safety of
20 that product. If there are third-party particulates being
21 added to THC, sometimes tens of thousands of grams, we need
22 to make sure that that is a safe product.

23 This case is evolving rapidly, right? We're
24 two weeks out from the complaint. In the last week,
25 significant evidence has disappeared. The servers which

1 backed up the on-site video cameras and demonstrate the
2 access logs and maintain the access logs are gone. That's
3 in violation of the regulations. We have not --

4 MR. HATFIELD: Say what you want to say.

5 MR. DOUGLASS: Allowing Delta Extraction to
6 continue to operate creates a risk of additional severe
7 regulatory compliance issues. And for these reasons, we
8 ask that the motion for stay be denied.

9 COMMISSIONER ILES: Thank you, Mr. Douglass.

10 Are you ready to proceed, Mr. Hatfield?

11 MR. HATFIELD: We are, Commissioner. Thank you.

12 Petitioner calls Brittany Kirkweg, please.

13 MR. DOUGLASS: Commissioner, at this point I would
14 invoke the witness exclusionary rule.

15 COMMISSIONER ILES: Does Petitioner have a problem
16 with that?

17 MR. HATFIELD: No. Just to be clear on the record
18 what we're doing -- okay, yeah. That makes sense. We do
19 designate Ms. Herndon as our corporate representative, and
20 that will mean that Mr. Maritz will need to wait in the
21 hall.

22 COMMISSIONER ILES: Right. So what we're doing
23 is, because someone is testifying, he's asked that other
24 witnesses be excluded from the room. And that's it.

25 Are you okay with that, Mr. Douglass?

1 MR. DOUGLASS: I'm sorry.

2 COMMISSIONER ILES: Are we good, then?

3 MR. DOUGLASS: I believe so.

4 MR. HATFIELD: Yeah. So Mr. Weiss is also here.

5 We do not intend to call Mr. -- we will not call Mr. Weiss

6 in our case. Thank you. So we call Ms. Kirkweg.

7 (Witness sworn.)

8 BRITTANY KIRKWEG, being sworn, testified as follows:

9 DIRECT EXAMINATION BY MR. HATFIELD:

10 Q Good morning, Ms. Kirkweg. You submitted an

11 affidavit as an -- or, yeah, as an exhibit in this case; is

12 that correct?

13 A I did.

14 Q And in that affidavit you tell us your title.

15 Tell us here for the record and what it is that you do,

16 ma'am.

17 A Yes. I work for the Department of Health and

18 Senior Services, Division of Cannabis Regulation. And I am

19 the Deputy Director for the Section for Compliance and

20 Enforcement.

21 Q And Mr. Douglass is your attorney here today?

22 A That's correct.

23 Q And you were here when he gave his opening

24 statement, correct?

25 A I was.

1 COMMISSIONER ILES: Mr. Hatfield, I'm sorry to
2 interrupt. Could you have the witness state her name and
3 spell it for the record, please.

4 MR. HATFIELD: Oh, of course. Let's do that.

5 THE WITNESS: My name is Brittany Kirkweg;
6 B-R-I-T-T-A-N-Y K-I-R-K-W-E-G.

7 BY MR. HATFIELD:

8 Q And, Ms. Kirkweg, when Mr. Douglass kind of gave
9 his opening of what he thinks the facts will show, that's
10 pretty much what's in your affidavit, right, or at least
11 that comes from your affidavit?

12 A My affidavit is -- the information that is in the
13 affidavit is about the credible threat, yes.

14 Q And is all of the information about the credible
15 threat that the Department has in your affidavit?

16 A The investigation is ongoing.

17 Q Okay. Is there more that you know today than what
18 is in your affidavit?

19 A As I said, the investigation is ongoing.

20 Q No. I understand. Did you answer? Yes?

21 A Is there additional information than what is in
22 the affidavit that I'm aware of in the case, yes.

23 Q Okay. And you've become aware of that since you
24 filed your affidavit on Friday evening; is that correct?

25 A I would -- I mean additional information, like I

1 said, the investigation is ongoing; so there is always new
2 information coming up.

3 Q All right. I think we understand.

4 So let's talk about this -- well, let's first of
5 all talk about this report. So Mr. Douglass said --
6 received a report first from Mr. Mullins, who's the
7 Executive Director of the Cannabis Trade Association; is
8 that right?

9 A Yes.

10 Q And that is not specific to Delta Extract,
11 correct?

12 A Correct.

13 Q And then you received some sort of follow-up from
14 Mr. Mullins about an out-of-state company offering -- I
15 didn't quite understand. Can you explain what the
16 out-of-state -- he was complaining about there?

17 A There was an out-of-state supplier, yes.

18 Q And that did not have to do with Delta Extract,
19 correct?

20 A They were not specifically named, no.

21 Q And the supplier that was offering, you have not
22 found any indication that Delta Extract was receiving any
23 product from that supplier that Mr. Mullins identified,
24 correct?

25 A I'm not aware that there is a direct connection

1 with that particular supplier.

2 Q Now, Mr. Mullins has since communicated with the
3 Department about this case, correct?

4 A I am unaware if he has, if he has contacted us
5 about this particular case.

6 Q Well, has he communicated with the Department
7 about the products that the Department has put on hold,
8 administrative hold, including the Delta Extract products?

9 A Not that I'm aware of.

10 Q You're not aware that he has sent a communication
11 on behalf of the Association, asking that the
12 administrative hold be lifted?

13 A Not that I'm aware of, no.

14 Q All right, all right.

15 Now, you say you also received an anonymous
16 complaint. And are you here today to tell us the name of
17 the person who complained?

18 A I do not have that information.

19 Q Mr. Douglass says you don't even know, correct?

20 A I do not know that --

21 Q Does anyone --

22 A -- person's identity.

23 Q I'm sorry. Does anyone at the Division know the
24 identity of that person?

25 A Yes.

1 Q Okay. And are you prepared to present a witness
2 to the Commission to tell us the identity of that person?

3 A Not at this point.

4 Q All right. So how would the Commission make a
5 determination that this person who has requested to remain
6 anonymous is, I don't know, sane?

7 MR. DOUGLASS: Objection. Calls for speculation.

8 MR. HATFIELD: Well, I don't think it does. I
9 think she -- she knows what this -- who this person is and
10 what they know about it. And she can tell the Commission
11 whether they have some evidence to come forward on whether
12 this person is credible.

13 MR. DOUGLASS: The question was: How is the
14 Commission going to make a decision? I don't think this
15 witness has presented -- the witness is not --

16 COMMISSIONER ILES: I'm sorry. I'm having
17 difficulty hearing you, Mr. Douglass.

18 MR. DOUGLASS: Sorry. The question was: How is
19 the Commission going to make a decision about this third-
20 party witness? I don't think the witness has any knowledge
21 of that, nor would the witness have that knowledge.

22 COMMISSIONER ILES: I mean, you can answer for
23 what it's worth, if you -- whatever you know.

24 THE WITNESS: I do not know the identity of the
25 witness. And to this point it hasn't been important

1 because the information that is credible is the information
2 that is in our state-wide track and trace system.

3 BY MR. HATFIELD:

4 Q Yeah. Going to get to that.

5 So just to be clear here, in light of
6 Mr. Douglass's objection, as the Deputy Director of the
7 Section for Compliance and Enforcement, who filed an
8 affidavit here, you don't know anything about this person
9 who wishes to remain anonymous, correct?

10 A It has not been important to know the identity of
11 that individual.

12 Q And it's not important to you, as the Deputy
13 Director of the Section, as to whether this person is, for
14 example, a competitor who's intentionally looking to hurt
15 Delta, right?

16 A The information that is important in this, is the
17 information that is in the state-wide track and trace
18 system.

19 Q Okay. So --

20 A That is where -- that is the credibility.

21 Q So that anonymous complaint, not relevant to you
22 at all; is that right?

23 A Not to this point.

24 Q Okay, all right.

25 And Mr. Mullins' complaint, not relevant to you?

1 A It is relevant in that we started to look into the
2 system, to look for inversion.

3 Q All right. And the Division has suspended
4 three manufacturers; is that correct?

5 A The information of the licensees that are
6 suspended is confidential, so I can't speak to that.

7 Q Well, Mr. Suntrup of the Post Dispatch reported
8 last week that the Department put out a statement that they
9 had, quote, suspended operations for three facilities, to
10 investigate potential product safety concerns; is that
11 correct or not?

12 A That is correct.

13 Q Okay. So the Department put out this
14 information --

15 A Yes.

16 Q -- that three facilities were suspended?

17 A Yes, if that is what is in there. I apologize. I
18 did not know it had been reported out.

19 Q Did you know that the department spokesperson had
20 put out a statement about it?

21 A I have not reviewed everything in the news in all
22 of our correspondence. I have been busy with this
23 investigation.

24 Q All right. So Mr. Suntrup's report in the
25 Post Dispatch on August 4th, 2023, quotes a department

1 spokesperson named Sami Jo Freeman.

2 A Okay.

3 Q Is that, in fact, the department spokesperson?

4 A Yes.

5 Q And it quotes there as saying that -- she says the
6 Department has suspended operations for three facilities,
7 to investigate potential product safety concerns, correct?

8 A Yes.

9 Q And the Department has not determined that any of
10 these products are unsafe, correct?

11 A The investigation is ongoing, so there has not
12 been a determination.

13 Q So sitting here today, you cannot tell the
14 Commission that there is any product sitting at Delta
15 Extraction's facilities that would be unsafe for us to
16 ingest right now?

17 A There is a credible threat.

18 Q And that credible threat is: What's wrong with
19 that product? What's in it that would hurt us as the
20 public?

21 A There is potentially product that has been
22 inverted and -- THC in product that has been inverted, that
23 was not grown in a regulated setting.

24 Q Okay. Wasn't grown in a regulated setting. But
25 you can't tell the Commission today that there's anything

1 harmful in the product, correct?

2 A Product may not have been tested to account for
3 the contaminants that may be in a product that was
4 inverted.

5 Q Okay, all right. We're going to get to that.

6 And Ms. Freeman is quoted as saying: All product
7 related to these investigations will be placed on
8 administrative hold. And that's happened, right?

9 A It has.

10 Q And that, she says, will happen until the product
11 is deemed safe, remediated or destroyed, right?

12 A Yes.

13 Q Now, in your affidavit you indicate that mandatory
14 testing protocols of marijuana and marijuana products are
15 strictly governed?

16 A Yes.

17 Q And that's true?

18 A Yes.

19 Q And you indicate that marijuana and marijuana
20 products within the regulated market are thoroughly tested,
21 correct?

22 A Yes.

23 Q And, in fact, it is the case that everything that
24 goes into a dispensary must be tested before it goes there,
25 correct?

1 A It is mandatory tested, yes.

2 Q All right. Mr. Pearson talked about, and you were
3 here, that Delta is sort of in the middle of the
4 distribution process. Do you generally agree there?

5 A Yes.

6 Q So it's grown, marijuana is grown, somewhere by a
7 licensed cultivator, correct?

8 A Right.

9 Q And then hemp might be grown somewhere and, in
10 Missouri, licensed by the Department of Agriculture. Do
11 you agree with that?

12 A I can't speak to hemp.

13 Q Okay. Don't know anything about hemp?

14 A Correct.

15 Q Okay. And so when we're talking about hemp
16 products, those aren't regulated by your division, correct?

17 A Correct.

18 Q And when we're talking about hemp products that
19 have point -- less than .3 percent of whatever that big
20 long word is, tetra, that's not your concern, right?

21 A It would be my concern if it is put into a
22 product, into a marijuana product.

23 Q Okay, all right. Let's just talk about that real
24 briefly. I've got some other witnesses to talk about it.
25 But when we're talking about this chain of

1 distribution, you grow plants, then it goes and you
2 manufacture, and you might manufacture oil?

3 A (The witness nodded her head.)

4 Q Fair?

5 A Correct.

6 Q You're going to need to answer out loud.

7 A Yes, yes.

8 Q I appreciate you nodding to encourage me.

9 And so you might end up with an oil. And you know
10 that in this case, right, Delta would manufacture oil that
11 would then go to other manufacturers?

12 A I think that is correct.

13 Q You agree with that?

14 A Yes.

15 Q And when Delta was manufacturing these oils that
16 would go to another manufacturer, you agree that there is
17 no mandatory testing requirement at that stage, right?

18 A The regulations require mandatory testing of final
19 marijuana product.

20 Q And oil that's going between two manufacturers is
21 not a final marijuana product, right?

22 A That would be correct.

23 Q It would be the responsibility of the receiving
24 manufacturer to do compliance testing before the product
25 goes to the dispensary?

1 A Yes.

2 Q All right. And then there is some product that

3 manufacturers make that go out to dispensaries, right?

4 A Yes. Final marijuana product.

5 Q And for those of us who are a little older and

6 never were familiar with legal marijuana product, what --

7 like gummies, I think of. Is that an example?

8 A Of a type of marijuana product, yes.

9 Q Yeah. Do you know, I'm not asking for a whole

10 list; but Delta was making, what, vaping pens?

11 A The main thing that I saw in their inventory was

12 vape cartridges --

13 Q Vape --

14 A Marijuana products.

15 Q Right. And all of those products, under your

16 regs, are tested before they go to the dispensary, correct?

17 A Product is tested under the contaminants that we

18 have outlined within our regulations for mandatory testing.

19 And our regulations set up mandatory testing for

20 contaminants that would be known in a regulated setting,

21 not for products that would be grown outside and have

22 potentially other contaminants that may not be tested for,

23 as our regulations require.

24 Q You lost me. The test that your division

25 mandates, it does test to make sure the stuff is safe,

1 right?

2 A It tests to make sure that the product -- that the
3 common contaminants that would be found in a regulated
4 setting are tested for, to make sure that those type of
5 contaminants are not within that product. But our
6 mandatory testing is a narrow, is -- does not include any
7 potential contaminants that may come from product that's
8 manufactured or grown outside of our system. And that
9 information is in my affidavit. So I can read from that,
10 if I can have a copy.

11 Q And so I'm going to come back to that in a minute.
12 But let's make sure I'm following what you're saying.

13 Your test doesn't test for everything that might
14 be harmful to the public. Is that what you're saying?

15 A Can I have a copy of my affidavit? And I will --

16 Q Sure.

17 A -- read the information.

18 Q So there's a folder in front of you. It's in the
19 pocket.

20 A Okay.

21 Q And that affidavit, by the way, is Defendant's --

22 MR. DOUGLASS: Exhibit R.

23 MR. HATFIELD: Exhibit R.

24 THE WITNESS: So in my affidavit, No. 13, we say
25 that marijuana products -- marijuana and marijuana products

1 originating outside of the regulated market pose a threat
2 to public health and safety because these products are not
3 grown in a licensed facility under requirements and
4 standards for safe cultivation, processing, and
5 distribution of marijuana and marijuana-infused products by
6 manufacturing facilities, including health standards to
7 ensure the safe preparation of marijuana-infused products.
8 Mandatory testing may not address contaminants in marijuana
9 product that is not cultivated in a regulated setting.

10 BY MR. HATFIELD:

11 Q So we're talking about that last sentence, that
12 the mandatory testing that you mandate may, meaning might
13 not, right, might not, or it's not allowed to?

14 A What do you mean?

15 Q So the sentence says mandatory testing may not
16 address?

17 A (The witness nodded her head.)

18 Q So, you know, as a lawyer, we live in a world of
19 semantics. One way to read that is: cannot address; it's
20 not allowed to address contaminants. The other way to read
21 it is that it might not.

22 A May not, we may not test for something that is in
23 a product that's not made in the regulated market.

24 Q All right. Well, let's -- I think we got it.

25 Let me ask you this: So we talked about vape --

1 did you say cartridges or pens?

2 A I said vape cartridges.

3 Q Cartridges, fair enough. Vape cartridges general
4 -- a lot of them, I'm told -- I have no personal experience
5 -- involve flavoring, correct?

6 A Yes.

7 Q And there is flavoring that is put into the
8 product, right?

9 A Correct.

10 Q That flavoring does not have to be manufactured in
11 Missouri, correct?

12 A Depending on what the additive would be. If it
13 doesn't contain THC, then no.

14 Q Right. So they're putting things in there, you
15 know, this, right? They are putting flavoring in, non-THC
16 flavoring, that comes from outside of Missouri?

17 A Yes.

18 Q And are you telling us that your testing, your
19 mandatory testing, would not pick up if that -- if that
20 flavoring that went in had, I don't know, terpentine in it?

21 A No. That's not what I'm saying because that would
22 be a common -- that would be a common practice for our
23 manufacturing facilities, to add something like that in.
24 And so that would be accounted for.

25 So like, for instance, we have residual solvent

1 testing, which would pick up -- you know, sometimes there's
2 a fails, fails for product when we have terpenes added.
3 Then it would fail for residual solvents. That is
4 something that generally manufacturing facilities do, and
5 that is covered by our mandatory testing.

6 Q I think we understand.

7 All right. In your affidavit -- which I
8 understand you have in front of you, right?

9 A I do.

10 Q So let's talk about the -- you know, we talked
11 about Mr. Mullins' complaint and this person we know
12 nothing about who complained. And then you talked about
13 what your data shows. And is that -- that appears to me to
14 be mainly addressed in Paragraph 25, correct, or is
15 there --

16 A 25 and 26.

17 Q 25 and 26, yep, fair enough.

18 All right. So let me go back here, just for a
19 minute, get our dates right. So you at the Division,
20 according to your affidavit, Paragraph 19, received a
21 report from Mr. Mullins, June 30th of '23, right?

22 A Yes.

23 Q And I'm trying to be clear on your testimony. You
24 began looking into this issue then?

25 A The Department has been looking into inversion.

1 It's a normal course of our jobs.

2 Q Oh, so before June 30th of 2023, you were looking
3 for inversion?

4 A Yes.

5 Q It's -- yeah, what you said. It's part of your
6 normal job to watch out for that?

7 A Yes.

8 Q All right. And so you had that in June '23, you
9 do it as part of your normal job, you issued an order of
10 immediate suspension to Delta, according to our Exhibit 2,
11 on August 2nd, right?

12 A Yes.

13 Q And Paragraph 25 contains all of the instances
14 you've been able to find in doing your job, since before
15 June 30th, after that complaint on June 30th and after your
16 order of suspension on August 2, correct?

17 A No. These are a few examples.

18 Q Okay. So you've become aware of others since
19 Friday, when you filed this affidavit?

20 A This does not -- this affidavit would not contain
21 every type of issue that we are experiencing with the
22 credible threat. These are just a few examples of Metrc
23 data that show the reasons why we believe that there is a
24 credible threat.

25 Q All right. These are the three you put in your

1 affidavit that you submitted to the Commission Friday?

2 A Yes, as examples, yes.

3 Q Okay. Are you prepared to present other
4 information today about other examples of unsupportable
5 increases in product weight?

6 A Not today, no.

7 Q Is that because you don't have the information or
8 just because you haven't been prepped to testify?

9 A We have additional information; but no, it's not
10 prepared, it's not prepared to testify.

11 Q So you're just telling us you have additional
12 information but you're not ready to tell the Commissioner
13 about it. Is that your testimony?

14 A There are thousands of data points within the
15 Metrc system. And these very well, clearly show inversion
16 to support our order of immediate suspension and what we're
17 here to talk about today.

18 Q All right. You said thousands. I think in his
19 opening Mr. Douglass said that at Delta there are millions
20 of Metrc tags.

21 A Not for sure of the exact amount. But every
22 product within a facility is to be tagged. There are --
23 product, as it moves through the system, required to be
24 repackaged, which would be another tag. And there's a lot,
25 a lot of different data points in Metrc; so yes, thousands,

1 millions. There are a lot of data points in our system.
2 So we have, you know, weights; we have movement, testing
3 results in our system.

4 Q I was getting ready to give Mr. Douglass trouble.
5 But you agree, millions?

6 A I don't know the quantity, but there is a high
7 number.

8 Q And you found four?

9 A There are five examples in here that very well
10 show the issues that we have today.

11 Q Well, there are -- Okay. Let's break it down for
12 just a minute. In Paragraph -- Just make sure we're on
13 the same page. Paragraph 25, there are three, correct?

14 A Correct.

15 Q And then in Paragraph 26, where you talk about
16 testing, there are two?

17 A Yes.

18 Q And that's how you get to five?

19 A Yes.

20 Q Okay. Well, let's talk about Paragraph 25,
21 the -- this is reading here. Specifically, data from Metrc
22 shows unsupportable increases in product weight. For
23 example, in No. 1 is an incident that happened in December
24 of 2021, correct?

25 A That is -- it started in December of 2021, and

1 then the actual product was made in March of 2022.

2 Q March of 2022. So the Department was aware, in
3 its ongoing job of looking for inversion, of this increase
4 in weight in March of '22, correct?

5 A No.

6 Q Well, Metrc data showed it in March of '22?

7 A Yes. We have our Metrc system for all of our
8 licensees. There are a lot, a lot of data points in Metrc.
9 So this is not something we were specifically aware of, nor
10 of any other instance of inversion at this point.

11 Q So weren't specifically aware of, meaning it's in
12 Metrc; you just didn't notice it?

13 A Right.

14 Q Okay. But you were looking for it as a part of
15 your ongoing job?

16 A Our compliance officers review Metrc data for
17 licensees to try to find this information.

18 Q All right. Regardless, between March of 2022 and
19 the order of immediate suspension in August, you never
20 notified Delta that there was an issue with this incident
21 you describe?

22 A We were not aware to notify them.

23 Q When did you become aware?

24 A When we started to investigate, after we had our
25 allegations.

1 Q In June -- or July, I mean, of this year?

2 A Yes.

3 Q So you became aware in July of this year?

4 A We became aware of the issues when Mr. Mullins
5 submitted the information. And then, when there was a
6 credible allegation that outlined Delta Extraction, then we
7 became -- began to specifically look into Delta Extraction.

8 Q Okay. So on 25a -- I'm not going to read through
9 the whole thing. But if you need to refer to it, tell me
10 this. Basically, what you're saying is that from Metrc you
11 can tell that there's a product that had a certain weight,
12 and then when you look at it later, the weight increases.
13 Is that fair?

14 A From what this shows in Metrc is that the facility
15 took a certain amount of bud flower material and they took
16 that and they made concentrate. They made 223 grams of
17 concentrate. And from that 223 grams, then they took
18 4 grams of that concentrate, and then they came up with
19 38,698 grams.

20 Q So this is what -- I'm going to use Mr. Douglass's
21 phrase. This is the loaves and fishes thing, right? I
22 don't specifically remember. I believe it's two loaves
23 that -- his analogy. But what you're saying is that the
24 4 grams turn into 38,000 grams?

25 A Yes.

1 Q You don't know what that extra 30,000 grams was,
2 do you?

3 A Correct.

4 Q Might have been flavoring?

5 A They took 4 grams and then they made 38,000 grams
6 of distillate.

7 Q Right.

8 A And so, no, I do not think that that is flavoring.

9 Q But you don't know, do you? You don't know what
10 is the extra 30,000 grams?

11 A Correct.

12 Q Don't know whether it was Missouri-produced,
13 correct?

14 A Correct.

15 Q Don't know whether it came from out of state,
16 right?

17 A Right. That is what our investigation is for.

18 Q You just can't tell why it went from 4 grams to
19 38,000 grams, right?

20 A Correct.

21 Q Might have been hemp product?

22 A So this is not an area in the production that we
23 would see an increase. We should see a decrease as they're
24 refining the material.

25 Q I get that. But you don't know why it happened

1 here?

2 A At this point in time, no, I do not.

3 Q All right. And you didn't know that when you
4 issued the order of suspension; didn't know why?

5 A But this is a common place for -- for inversion of
6 marijuana product.

7 Q And, surely, before you issued an immediate order
8 of suspension, you asked Delta why that increase happened,
9 didn't you?

10 A Our immediate order of suspension is to protect
11 public health; so no. We stopped. We suspend facility
12 operations so we can investigate and make sure that if
13 there is -- that there is not a credible threat before we
14 move forward.

15 Q Since August 2nd, when you issued the order of
16 suspension, and up to today, have you asked anybody at
17 Delta why that happened?

18 A We have not.

19 Q Okay. And you participated in the conference call
20 that Mr. Pearson talked about where representatives of
21 Delta's were on the call, right?

22 A Uh-huh.

23 Q And they asked you for the details of why you
24 suspended them, correct?

25 A Yes.

1 Q And you said you weren't going to give any more
2 information, right?

3 A We provided information saying -- I don't have a
4 copy of the conference call summary in front of me. But it
5 was something to the effect of: that there were significant
6 inconsistencies with the input and the output of marijuana.

7 Q Did you tell them about this incident?

8 A We did not give them specifics, as our
9 investigation was ongoing.

10 Q And didn't give them a chance to explain that,
11 even after they were suspended, right?

12 A Not to this point.

13 Q Today is their chance. Fair?

14 A If that is what they provide.

15 Q Yeah, fair enough.

16 All right. Let's talk about "b" of Paragraph 25
17 of your affidavit. March 25th, 2022, is when this incident
18 occurred, right?

19 A March 25th of '22, yes.

20 Q And your folks at DCR, who's ongoing job it was to
21 look for inversion, could have looked in Metrc the day
22 after and seen what you describe here, correct?

23 A The information would have been in Metrc, yes.

24 Q Yes. And, again, don't know why the weight
25 changed? No idea?

1 A No.

2 Q So when you say it's a clear indication of
3 inversion, in your paragraph here, you agree with -- I
4 think both counsel have said inversion is product that
5 comes in from out of state, right?

6 A Inversion would be product that would come in from
7 out of state, or it could be product that is grown in
8 Missouri but not by a licensed cultivator, or it could be
9 product that's chemically modified. So it would be
10 anything that's not within our seed-to-sale tracking
11 system, Metrc.

12 Q Yeah. I don't think this is important, but I'm
13 going to anyway. People grow hemp in Missouri through
14 Department of Agriculture processes, right?

15 A I'm not for sure.

16 Q Well, then let me ask you this: If someone has
17 grown hemp in Missouri, and just lawfully, does your
18 department take the position that that cannot be used in
19 marijuana products?

20 A In our rule it says that any THC product -- or any
21 THC in a marijuana product is to come from our licensed
22 cultivator.

23 Q Right. Meaning that if they grew hemp under
24 Department of Agriculture regulations, it could not be used
25 in your product; is that right?

1 A It could be used as an additive, like for CBD,
2 which is also in our rule, where it has to have a C of A
3 and it has to have testing prior to them bringing that into
4 their licensed facility.

5 Q Okay. So if it's hemp from Missouri, it can be
6 added. Is that what you're saying?

7 A Again, I would like to point to the rules to
8 specifically say what our rules say. It says that any THC
9 tetrahydrocannabinoid -- cannabiniol, sorry, such as THC-A,
10 Delta-8 or Delta-10 in, in a marijuana product manufactured
11 by a manufacturing license shall only be derived from
12 marijuana cultivated in Missouri by a licensed cultivator.

13 And then it goes on to talk about: Manufactured
14 product may not contain chemically -- chemical modified
15 conversion or synthetic derivations of cannabinoids to
16 produce intoxicating cannabinoid isomers, including those
17 created by heat or other process during use by a patient or
18 a consumer, and cannabinoids acquired from entities other
19 than marijuana facilities for the purpose of inclusion in
20 marijuana product must be accompanied by a certificate of
21 analysis at the time of acquisition, that identifies the
22 testing lab that tested the product and lists the product
23 ingredients.

24 Q So, I lost my train of thought. Sorry.

25 So on Paragraph 25b of your affidavit -- let's

1 just go back to that. I think you answered it. I
2 apologize. But in terms of the discussion of weight, you
3 don't know why that happened?

4 A Do not know why, but know that when reviewing
5 testing results for this product, the THC that was in the
6 distillate that was originally used for the vape
7 cartridges, that the -- the THC potency actually went up
8 when the vape cartridges were made, and the THC-A that was
9 in the distillate when the vape cartridges were mandatory
10 testing, there was -- tested, there was no THC-A.

11 Q Wait. Where is that? Where are you reading right
12 now?

13 A I'm not reading from this. I'm saying that there
14 is inversion of marijuana product; so yes, there is 1,100
15 1-gram vape cartridges that were made from 1,100 grams
16 distillate. And then later that day they increase it by
17 2,900 vape cartridges.

18 Q Right.

19 A And so --

20 Q Where were you reading about potency?

21 A That is not in here.

22 Q So you didn't include that in your affidavit
23 because it's not relevant to the analysis, right?

24 A It is, it is additional information.

25 Q Okay. And what documents are you talking about

1 that analyze the potency of this particular Metrc tag?

2 A So the vape cartridges, as we talked about
3 earlier, are final marijuana product. So they have to be
4 tested by the licensee prior to going to a dispensary. And
5 so that vape -- those vape cartridges were tested by
6 Manufacturing 22, Delta Extraction.

7 Q All right. So let's talk about "c." November 11,
8 2023, this is your third. And I understand there's a typo?

9 A So that date should be November 7th of '22.

10 Q Luckily for us, four days doesn't really matter in
11 this case. But sometime in November of '23 is the next
12 incident, right? And, again, this is an incident that the
13 Department, at least if you were looking and paying
14 attention in Metrc, would have been aware of in November of
15 '23, right?

16 A I think it's important to --

17 Q Or not. Am I wrong about that?

18 A The information is available in Metrc.

19 Q Okay.

20 A In the system.

21 Q 2023?

22 A '22.

23 Q It's -- okay. That's where the --

24 A That was the typo. It was November 7th, 2022.

25 Q Okay. So you made a mistake of four days and

1 one year, correct?

2 A That's correct.

3 Q And, by the way, that happens, right? Sometimes
4 people just make errors in things they're writing down,
5 right?

6 A That's correct.

7 Q And in your next paragraph, that's one of the
8 things that you say Delta shouldn't have done, right, that
9 they shouldn't have made an error when they wrote down how
10 many vape cartridges there were, right?

11 A There was a typing error. I think that was noted.

12 Q Yeah. So their typing error --

13 A Sorry. Not a typing error. It -- not a typing
14 error. It was a recount, not typing error.

15 Q Okay. They made a mistake there?

16 A It's unknown.

17 Q Yeah, okay. We'll get to that one in a minute.

18 But, anyway, you were off by four days and a year
19 here?

20 A Yes.

21 Q Okay. So I should have said that right. Back in
22 '22 your department should have seen this in Metrc, if you
23 were looking for it?

24 A The information was available in Metrc. Our
25 compliance officers, while we do look into Metrc, there are

1 also other duties. And our compliance officers have
2 multiple facilities.

3 Q Yep. And, again, we show an increase of weight
4 from 5 grams to 130,000 grams, but you don't know what that
5 was, right?

6 A So the licensee --

7 Q Or not. Am I wrong about that?

8 A I -- do I -- no. But I know what is in the
9 system, what the licensee has said.

10 Q You're going to get a shot to explain all of that.
11 Right now I just want to make sure that we understand what
12 you're saying in this affidavit.

13 So when it went from 5 grams to 130,000 grams,
14 don't know if that was Missouri-cultivated that got put
15 into it, correct?

16 A Missouri cultivator. Are you talking about bud
17 flower?

18 Q Well, we don't know if it was -- whatever it is
19 that made that increase, we don't know if that is from a
20 licensed facility or not, do we?

21 A If it was from a licensed facility, that
22 information would also be tracked in the system. It
23 wouldn't just appear.

24 Q We don't know if it was hemp product, right?

25 A From the information that's in the system, it says

1 that it's CBD distillate.

2 Q Okay. And don't know whether it came from
3 Missouri or some other state?

4 A So if it is -- if it would be something that came
5 from a licensed cultivator, it would -- it should be in the
6 system.

7 Q All right. Let's talk about Paragraph 26 now. So
8 Paragraph 25 was about weight increases?

9 A Yes.

10 Q And then Paragraph 26 you say: a weight increase
11 after mandatory testing?

12 A Yes.

13 Q And of all the millions of Metrc tags that you and
14 Mr. Douglass have talked about and of all the research
15 you've done in your normal tracking and everything you did
16 after Mr. Mullins complained and after this, you've got
17 two times that there was weight added after mandatory
18 testing?

19 A These are two examples of other instances of
20 increases after testing.

21 Q And you don't have any more, do you?

22 A In this today, no.

23 Q Well, you said in this. You don't have any more
24 today, period, do you?

25 A Examples, yes. There are multiple instances in

1 Metrc where there are increases after testing.

2 Q And that's something that you see for other
3 manufacturers too, isn't it?

4 A Yes.

5 Q It's fairly common that you -- well, it is not
6 unheard of that a manufacturer will make an entry into
7 Metrc after mandatory testing that changes the weights,
8 correct?

9 A If there are instances like that, that would be
10 something that we would look into for inversion of
11 marijuana product.

12 Q And you look into that on an ongoing basis when
13 you see those changes being made, right?

14 A When it is brought to our attention. So in Metrc
15 if we find that data, there is -- there is a lot of
16 different data points in Metrc. It's not like something
17 just comes up and it is on your computer screen for you to
18 look into. You have to look into the system for those
19 types of issues.

20 Q So you guys don't have like some sort of flag
21 system that would show, hey, they added something after
22 mandatory testing?

23 A There are reports and things we can run, but there
24 is a lot of data points in Metrc.

25 Q And so that's not something you guys are really on

1 alert for, that something is added after mandatory testing?

2 A Our compliance officers do look in the system for
3 those types of issues.

4 Q Well, is this -- adding a product after mandatory
5 testing, is that a threat to public safety?

6 A Yes.

7 Q But you don't have any system to alert you when
8 Metrc clearly shows that something was added after
9 mandatory testing?

10 A Like I said, there are reports and things that we
11 have started running because of these inversion reports, to
12 try to find this information.

13 Q All right. So "a" happened January 16th of 2023,
14 right, what, seven months ago, right?

15 A Yes.

16 Q And you haven't -- you didn't bring this to the
17 attention of Delta and say, hey, what happened there,
18 right?

19 A As I've stated, these were not tags that we had
20 found or we would have asked about them, yes.

21 Q But up until today, you still haven't asked Delta,
22 hey, what happened with this January 16, 2023?

23 A Correct.

24 Q And that's because you accepted their explanation
25 which they provided in June of '23, that this was a typing

1 error, correct?

2 A That is not correct, saying that we've accepted
3 their reasoning.

4 Q Okay. Well, you didn't reject it. I mean, you
5 didn't do anything about it, right?

6 A So just because the Department hasn't done
7 anything about it doesn't mean that it's approved.

8 Q All right. And, apparently, according to your
9 affidavit, you see in Metrc that Delta says that, quote,
10 during our comprehensive audit, one extra box was located
11 in the back of the vault that was unaccounted for during
12 the packages initial count, right?

13 A That is correct.

14 Q And you don't know, you haven't asked them to
15 explain any of that, right?

16 A Correct.

17 Q You're assuming -- are you assuming it's true or
18 not?

19 A So our -- in our regulations, we are -- we require
20 licensees to complete monthly inventory. And so this is --
21 happened in January, and now in June they find 100 extra
22 vape cartridges. So this is a problem because this box may
23 not have been available for mandatory testing and for a
24 representative sample to be collected from.

25 Q Let's talk about that. So there are 2,600 grams

1 of --

2 MR. DOUGLASS: Commissioner, if I could jump in.
3 This is direct examination. I would request that the
4 witness be allowed to finish her answer before Mr. Hatfield
5 asks his next question.

6 COMMISSIONER ILES: Okay. Is that an objection?

7 MR. DOUGLASS: It is an objection insofar as he
8 keeps cutting off the witness's answer.

9 MR. HATFIELD: Yeah. Well, I'm doing that so I
10 don't have to instruct -- ask the Commission to instruct
11 her to actually answer my question, rather than
12 filibustering.

13 COMMISSIONER ILES: Okay. I think -- I mean, it
14 appears to me she's answering fairly completely. And if
15 you feel she's not giving enough information, you can
16 certainly elicit more information on cross-examination.

17 BY MR. HATFIELD:

18 Q So with respect to Paragraph 26a, -- let me just
19 ask it this way -- has the Department made a determination
20 that Delta's explanation here is not true?

21 A There has not been a determination. We are still
22 investigating.

23 Q And have you -- but have you -- you haven't taken
24 any steps to figure out whether it is true or not, have
25 you?

1 A So not only -- we would -- I'm trying to -- I mean
2 this is under investigation. So trying to figure out the
3 information that we need from the licensee to be able to
4 prove or disprove that this is accurate.

5 Q And then just to wrap it up, haven't asked the
6 licensee for any information about whether that allegation
7 is true or what happened, have you?

8 A That is correct.

9 Q All right. And so let's make sure the
10 Commissioner is real clear on something about the testing
11 here. It looks like, according to the licensee, they found
12 a hundred vape cartridges that weren't included in the
13 original batch. Sound right?

14 A Yes.

15 Q You don't test every one of them, do you?

16 A You have -- no, you do not test every one of them.
17 You have a representative sample from the entire process
18 lot. So if the entire process lot is not there, then that
19 is not a representative sample.

20 Q Gotcha. And can we tell from the information
21 you've provided to the Commission how big the process lot
22 was, how many vape cartridges?

23 A That information is -- it does say there's 2,915
24 1-gram vape cartridges. That's right after the date.

25 Q Oh, okay. So there were 2,900 vape cartridges,

1 2,915, and they had to do a random sample of, my
2 understanding is, less than 1 percent of those, correct?

3 A They're -- for vape cartridges they're -- in our
4 rule is a table that would say how many that they have to
5 collect. So I don't know if it would be 8 or 13 in this,
6 in this instance.

7 Q It's in the rule. When you say 8 or 13, 8 or
8 13 cartridges or 8 or 13 percent?

9 A Vape cartridges.

10 Q Oh.

11 A It's a number.

12 Q All right. So they should have collected -- if it
13 was 2,915, they should have collected 8 or 13, right? You
14 don't need to look it up. It's not -- somewhere in --

15 A They should have collected the number as outlined
16 per the regulation.

17 Q All right. And then they really should have
18 had -- I went to law school because I can't do math -- but
19 3,015 in the total sample, right?

20 A Yes.

21 Q And they still would have had to collect somewhere
22 between 8 and 13 for testing, right?

23 A They would have collected the -- like I said, it
24 would depend on -- so it would depend on the number that
25 could have increased.

1 Q Yeah.

2 A But I don't know if it's 8 or 13.

3 Q The Commissioner can read the rule and look --

4 A Yeah.

5 Q -- in the box and figure that out, right? Okay.

6 And so those 100 vape cartridges, we don't know

7 that those should have been tested, right, those 100?

8 A I don't know that they would have been picked, but

9 they should have been a part of the random sample for that

10 opportunity to be selected.

11 Q Okay, all right, okay.

12 So that's July 16th, 2023. And the second example

13 you have is July 14th of 2022, right?

14 A Yes.

15 Q And so this is another instance where you say that

16 product was added after mandatory testing, right?

17 A Yes.

18 Q Something the Department could have seen in, in

19 October -- wait, when -- July of '22 or October '23?

20 A October of -- October 5th is when that -- the

21 package was increased by 40 vape cartridges.

22 Q So this says October 5th of '23.

23 A It's supposed to --

24 Q We're in August of '23.

25 A Yes. So, obviously, a typing error. October, it

1 should be October 5th, 2022.

2 Q Quite all right. It happens. We all make typing
3 errors, right?

4 A (The witness smiled.)

5 Q So October 5th of 2022, the Department knew or
6 could have known, by looking in the system that it
7 regularly reviews, that product was added after mandatory
8 testing?

9 A The information would have been in Metrc.

10 Q Okay. And haven't asked Delta to explain it,
11 haven't gathered any other information about it since that
12 happened in October?

13 A Correct.

14 Q Of last year. And, again, I think we've covered
15 it. But of the millions of Metrc tags, these are the two,
16 right?

17 A They're two examples.

18 Q All right. In the article that I talked to you
19 about a little earlier, Ms. Freeman of the Department says
20 that the product is on hold until the product is deemed
21 safe. How are you going to deem the product safe, other
22 than the mandatory testing that's been created, that's been
23 done?

24 A So that would be us concluding our investigation
25 and the -- and Delta Extraction showing that there's not

1 inversion of marijuana product.

2 Q Okay. So let me make sure I understand the
3 Division's position. If it's inverted, it's dangerous to
4 the public?

5 A Yes.

6 Q Okay. So all product that comes from another
7 state is dangerous to ingest?

8 A All product that is not grown within our regulated
9 setting, we would deem not safe.

10 Q Even if it's been thoroughly tested for all
11 possible known contaminants because --

12 A That's not for me to say.

13 Q Okay. Well, no, that kind of is, 'cause you're
14 here saying that this product is a danger to the public,
15 right?

16 A Yes.

17 Q And so I guess I'm just trying to understand. I
18 think what you're saying, if it comes from out of state,
19 it's dangerous to eat it or smoke it. Is that fair?

20 A Saying that any product that is not grown within
21 our regulated setting, we are -- our testing results -- our
22 mandatory testing is set up for product that's grown in our
23 regulated setting. So if it is not grown in the regulated
24 setting, then I cannot say if the testing would deem -- you
25 know, would say that it's safe.

1 Q All right. But, regardless, the Department has
2 said that what you're investigating is product safety
3 concerns, right?

4 A Yes.

5 Q Have you notified the general public that there is
6 product out there that might be unsafe?

7 A There should be a notice that will be going out,
8 yes.

9 Q Okay. But it hasn't gone out?

10 A To my knowledge, no.

11 Q So you've known about this, at least since
12 August 2nd, and haven't sent any notices out about unsafe
13 product?

14 A There is a credible threat, so we are
15 investigating. And then our recall information, there's
16 information in rule that talks about the difference in
17 putting product on administrative hold and recall and doing
18 a recall to the public.

19 Q And thank you. That's very helpful.

20 You did not order a recall at any time, up until
21 today, correct?

22 A At this point product is on administrative hold.

23 Q Right. But let's talk about that. On
24 administrative hold, meaning that if it's sitting in a
25 licensed facility, including a dispensary, it must be held

1 and not sold, right?

2 A Correct.

3 Q But some of the product that you're talking about
4 here has already been sold to consumers, correct?

5 A Correct.

6 Q Could be sitting in their houses right now?

7 A Yes.

8 Q Could be sitting in their glove boxes to be
9 consumed?

10 A Yes.

11 Q But you haven't done anything to tell them that?

12 A That is something that the Department is working
13 on and should have issued.

14 Q And that's because you don't know whether it's
15 dangerous to the public or not, right?

16 A It is under investigation.

17 Q Right. You're not prepared to tell the public
18 that the product they have sitting in their houses is
19 dangerous, right?

20 A We will be issuing that, I think this afternoon,
21 to tell them that this product from manufacturing 22, there
22 is a threat to public health.

23 Q A threat to public health. But you haven't made
24 any determination that any of it is dangerous to consume,
25 correct?

1 A The investigation is ongoing (nodding).
2 Q So I'm right?
3 A I mean, there has been no determination.
4 Q When did you decide you were going to do that this
5 afternoon?
6 A This has been in the works.
7 Q Okay. But, still, you haven't asked Delta to
8 explain any of this up until today, right?
9 A Correct.
10 MR. HATFIELD: Okay. I don't have any other
11 questions for this witness, Commissioner.
12 COMMISSIONER ILES: Cross-examination,
13 Mr. Douglass.
14 MR. DOUGLASS: Commissioner, I would reserve our
15 questions for direct, if we could recall the witness in our
16 presentation of evidence.
17 COMMISSIONER ILES: Okay. That's fine.
18 Your next witness, Mr. Hatfield.
19 MR. HATFIELD: Could I have like 60 seconds?
20 COMMISSIONER ILES: Actually, we've been going for
21 over an hour. Why don't we take about six or seven minutes
22 and have a little break. Is that okay with everybody?
23 MR. HATFIELD: Yes. That would be great. Thank
24 you.
25 (A recess was taken.)

1 COMMISSIONER ILES: We are back on the record.
2 You may proceed.
3 MR. HATFIELD: Commissioner, Petitioner calls
4 Mr. Jack Maritz.
5 (Witness sworn.)
6 JACK MARITZ, being sworn, testified as follows:
7 DIRECT EXAMINATION BY MR. HATFIELD:
8 Q So would you state and spell your name for the
9 record, please.
10 A My name is Jack Maritz, J-A-C-K M-A-R-I-T-Z.
11 Q And, Mr. Maritz, you know we're here about Delta
12 Extractions, LLC. What is your position with respect to
13 Delta Extractions?
14 A I'm the General Manager/Lab Manager.
15 Q And what are your job duties at a general level?
16 A I oversee the day-to-day operations in general;
17 kind of, you know, whatever needs to happen, I can help
18 out.
19 Q And in overseeing the job operations, how often
20 are you in the facility?
21 A Five days a week, the normal business days.
22 Q And are you familiar with all of the operations
23 that are going on, or that were going on, I guess I should
24 say, at Delta Extraction?
25 A Yes.

1 Q And I know you were in the hall for a little
2 while, but you were sort of here for opening statements; is
3 that right?

4 A Yes.

5 Q So can you just -- I think it would be helpful for
6 you, as the general manager, to explain what was going on,
7 what product was being produced at Delta Extractions prior
8 to August 1. And we're going to come back to why August 1
9 is important. And you know why, right?

10 A Uh-huh.

11 Q All right. So explain to the Commissioner a
12 little bit, what was being produced at Delta Extractions,
13 LLC, prior to August 1?

14 A Yeah. A high level. We have two different
15 extraction processes and two different brands. One is
16 Midwest Magic, that uses a butane extraction process. We
17 make concentrates and vape carts. Another was the Conte
18 brand, which produces distillate with the -- before
19 August 1st, the THC-A process that we've talked a little
20 bit about, and they also make vape carts.

21 Q And so you talked about the two brands. Maybe
22 just to orient us all, Delta Extraction has a manufacturing
23 license. And were you a -- in the course of your
24 involvement, have you manufactured for different brands?

25 A Yes. We've done what's called white labeling. So

1 a company will, you know, want to have cartridges in their
2 dispensary's logo, or whatever it is; and so we'll fill up
3 cartridges or make products for them and put their
4 packaging on it.

5 Q Sort of similar to any factory that might
6 manufacture a brand, right?

7 A Yeah.

8 Q Okay. So let's talk the Commissioner through just
9 a little bit, and knowing that you heard the openings and
10 you're kind of oriented to some of the issues. When you
11 talked about Midwest Magic and -- and did you already say,
12 was that kind of separate?

13 A Yeah, that's separate. We use different machines
14 for that extraction process. It's a different brand. We
15 have different people who work on it.

16 Q And, generally, what products are you producing
17 for the Midwest Magic brand?

18 A Concentrates, vape pens, and also some drinks,
19 edibles.

20 Q And so the drinks and edibles go out to
21 dispensaries?

22 A Correct, yep.

23 Q And then what about the concentrate, where does
24 the concentrate go?

25 A That goes to dispensaries as well.

1 Q Okay. So all of the Midwest Magic project --
2 product is manufactured and produced to go to dispensaries,
3 right?

4 A Correct.

5 Q And so you heard Ms. -- well, no you didn't. You
6 were in the hall. Ms. Kirkweg talked to us a little bit
7 about mandatory testing the Department requires.

8 A Uh-huh.

9 Q When it comes to the Midwest Magic product, did
10 all of that go through the mandatory testing required by
11 the Department?

12 A Yes. In order to transfer it to a dispensary, it
13 has to go through mandatory testing. The software wouldn't
14 allow it to be transferred without that test.

15 Q And you know we're all here in the context of a
16 case. Are you aware that Ms. Kirkwood -- Kirkweg, sorry,
17 has submitted an affidavit that talks about, among other
18 things, some testing issues?

19 A Yes.

20 Q And in your review of that, could you determine
21 whether the incidents she's described have anything to do
22 with the Midwest Magic product?

23 A It does not, no.

24 Q All of it has to do with what, then?

25 A With Conte product.

1 Q Okay. So describe for the Commissioner a little
2 bit, what was happening with the production of the Conte
3 brand.

4 A Yeah. So Conte makes and produces distillate in
5 Missouri. They also have a brand of vape pens. So they'll
6 typically make 40- to 50,000 vape pens over a period of a
7 couple days. So they'll come out with 20 different flavors
8 of vape pens, fill them all up, all from the same batch of
9 oil, and then get them tested and then will put them in
10 packages and, yeah, sell them after testing.

11 Q So you heard the opening. Is there any point in
12 that process where there is -- I'm going to go with
13 material, that may come in from out-of-state sources?

14 A Yes. In the distillation process.

15 Q And what is the material that comes in?

16 A That's hemp-derived THC-A.

17 Q And you heard Mr. Pearson talk a little bit in his
18 opening about the definition of hemp. Does Delta have any
19 records to show that that product has less than .3 percent
20 THC, the definition he read?

21 A Yes. It all comes with a certificate of analysis.

22 Q That shows, just to keep our -- straight.

23 A That shows that it's less than .3 percent THC.

24 Q All right. You've got a book in front of you, and
25 let's turn to --

1 MR. HATFIELD: And, Commissioner, you have the
2 same book, I believe.

3 BY MR. HATFIELD:

4 Q Let's do Exhibit 20. Well, let's do it this way.
5 So Exhibit 20, if you could just take a look at the front
6 page, Exhibit 21, Exhibit 22, Exhibit 23, Exhibit 24,
7 Exhibit 25, 26, 27, what are these?

8 A These are all certificates of analysis.

9 Q Okay. And is that what you were just referring
10 to?

11 A Yes.

12 Q And are these all records of Delta that you're
13 familiar with?

14 A Yes.

15 Q And are these kept in the ordinary course of
16 business?

17 A Yes.

18 MR. HATFIELD: Move the admission of those
19 exhibits, Commissioner, 21 through 27.

20 COMMISSIONER ILES: Mr. Douglass.

21 MR. DOUGLASS: No objection for purposes of
22 today's hearing.

23 MR. HATFIELD: I made a typographical error. I
24 said 21. I meant to say 20 through 27.

25 COMMISSIONER ILES: Okay. You're offering

1 Exhibits 20 through 27 at this time?

2 MR. HATFIELD: Yes, ma'am.

3 COMMISSIONER ILES: And there's no objection.

4 They are received.

5 (PETITIONER'S EXHIBITS 20 THROUGH 27 WERE RECEIVED
6 INTO EVIDENCE AND MADE A PART OF THIS RECORD.)

7 BY MR. HATFIELD:

8 Q So let's look at -- let's flip to one that's
9 really pretty. How about 24? Let's just -- you're
10 familiar with, I guess you are, certificates of analysis?

11 A Yeah.

12 Q You see these in a regular part of your job?

13 A Yep.

14 Q How often?

15 A Oh, every week. We're getting stuff tested and
16 receiving other tests back for stuff on a variety of
17 products.

18 Q Now, these certificates of analysis, is this,
19 under your understanding, a requirement of the Department?

20 A Yes, it is.

21 Q Okay. And Ms. -- well, you weren't here, again.
22 But Ms. Kirkwood -- Kirkweg testified about certificates of
23 analysis. And your understanding, again, is that you're
24 required to have those?

25 A Yes.

1 Q Okay. So we're looking at Exhibit 24. And if you
2 could help us all out a little bit with what we're seeing
3 here, up at the top in the upper right-hand corner, it says
4 Missouri License #. But that's not Delta's license number,
5 right?

6 A That's the testing facility's license number. You
7 can see it says TES. That's the first three letters.

8 Q Are you familiar with Green Precision Analytics?

9 A Yes.

10 Q Are they a licensed tester that you normally work
11 with?

12 A They are, yes.

13 Q All right. And so maybe just walk us through a
14 little bit what we're seeing here on this certificate of
15 analysis.

16 A Yeah. So right under the Missouri testing license
17 number, you see it says, certificate of analysis. And then
18 the next line down, the second line in that orange box,
19 this is for quality assurance purposes. So this isn't the
20 final compliance test that we need, to sell products to
21 dispensaries. So this is a voluntary test of some
22 distillate.

23 As we kind of go through everything, you can see
24 under the batch results, part of it has potency, foreign
25 matter, heavy metals, microbial, mycotoxins, pesticides,

1 solvents. So those are all the categories that a product
2 would normally get tested for when it's going for full
3 compliance testing. But we, after we produced this
4 distillate, got it tested for all those categories, just to
5 make sure that it was good to go.

6 Q Okay. So one thing I want to make sure we're
7 clear on, when you say it's distillate, we know that is the
8 Conte brand product?

9 A Yes.

10 Q And we know that that is the product where hemp-
11 derived THC-A of less than .3 percent was coming from
12 another state, right?

13 A Yes.

14 Q Okay. And so this particular batch and all of
15 these batches, I guess -- the Commissioner can look at them
16 because they're in evidence -- have to do with distillate.
17 I see on the first page, you talked about the batch result,
18 the testing. And it's over there on the right where it
19 says: potency tested, foreign pass, metals pass, microbial
20 pass; etcetera.

21 A Uh-huh.

22 Q And then there are some pages behind that. Is
23 that kind of the backup data or more detail? Describe it
24 for us.

25 A Yeah. It goes through every single thing that it

1 gets tested for. And you can see that the first one is
2 obviously the cannabinoid profile, that gives the
3 percentages and the weights of all the cannabinoids in the
4 sample. And then it goes through heavy metals, microbial.
5 And, yeah, that's every single thing that a testing lab
6 tests for.

7 Q So, for example, you're -- they're testing to see
8 if there's any ethanol in there?

9 A Yes.

10 Q Or any propane?

11 A Uh-huh.

12 Q And then when we go to the next page, it looks
13 like there's even more things that are tested for, things
14 like -- I don't recognize any of these, by the way. But
15 there's other things that are tested for, that appear to
16 be, according to the sheet, pesticides, right?

17 A Yes.

18 Q All right. And this particular sheet shows pass
19 on, I'll just represent, sort of everything, right?

20 A Yes. And you can see that it actually shows ND,
21 which means non-detect, for everything. So there's a limit
22 to how much we're allowed to have in before it fails a
23 test, and there were no pesticides in this case detected.

24 Q So is this the same, this series of testing, these
25 things that are tested for -- when you're testing the

1 distillate, is it the same test that you're doing over on
2 the Midwest Magic side of that product?

3 A Yes, it is. All -- this is the same for every
4 product in Missouri. Every product that gets sold to a
5 consumer has to go through these tests.

6 Q And just to wrap that up, so this is your
7 certificate of analysis, the R&D test?

8 A Uh-huh.

9 Q But it sounds like there's another test that
10 happens later?

11 A Yes. When this would get packaged into products,
12 vape cartridges, for example, it would go through this
13 entire test again.

14 Q Right. So we're here today because the Department
15 has alleged -- you don't need to go to it; but in
16 Exhibit 2, the immediate order of suspension, that there is
17 an imminent threat to public health. So, as the general
18 manager of this facility, this is kind of your opportunity
19 to respond to that and to explain to the Commissioner
20 whether you believe there is a threat to public safety.

21 A I don't see how there could be, especially when
22 we're talking about this process with the THC-A. We've had
23 thousands of liters produced through our facility. That
24 can be made into millions of products. We've had it spread
25 out to a whole bunch of manufacturers throughout the state,

1 that have all made products into it and all gotten those
2 mandatory tested.

3 And so that distillate has been distributed
4 throughout the entire state of Missouri. We've never heard
5 of a failed test or someone getting sick or anything like
6 that. So since we got approval from the Department to do
7 this process, we've never had a problem. But now,
8 apparently, we're here.

9 Q So that's what I was looking for. Let's break
10 that down a little bit. So how long have you been in your
11 current position? How many years?

12 A Two, about. Since we opened the lab.

13 Q And during that period, are you aware of any
14 reports of customers, the public, having any adverse health
15 effects?

16 A No.

17 Q All right. So, now, you mentioned something about
18 failed testing. Let's talk first about what we call the
19 R&D tests, these things we were just looking at. When you
20 do those tests, have you ever had instances where something
21 doesn't pass?

22 A Yes.

23 Q And what do you do when that happens?

24 A Well, if it's a voluntary test, an R&D test, we're
25 allowed to make changes to the products. So most commonly

1 with the Midwest Magic brand, we use butane as a solvent.
2 And too much of that butane will be left over in the
3 product. So we're allowed to return that to a vacuum oven
4 or whatever we use to get butane out of that product. If
5 it fails the compliance testing when it's already packaged
6 up into things going to dispensaries, then we have to get
7 approval from the State to run those same procedures.

8 Q And so if it fails that final compliance testing,
9 what's the first step that you take before you get
10 approval?

11 A We have to quarantine the product, so we put it in
12 a special place in the building where we're not allowed to
13 touch it, and then we fill out a form and submit it to the
14 State.

15 Q And have you always done that for every product
16 that has failed that final testing?

17 A Yes.

18 Q How often does that happen?

19 A Not really that often. Obviously, we don't want
20 it to happen, and so we get R&D testing in order to know
21 that our products are good to go before they potentially
22 get locked up and we have to go through the whole system.
23 But less than once a month.

24 Q So before we leave the whole testing thing, let's
25 talk about one more example. I think you mentioned, to me

1 at least, that there is an example that you know of where
2 the Conte brand had an issue at the R&D level.

3 A Yes.

4 Q Tell me about that.

5 A The first round of pens that Conte ever filled,
6 they -- when they make a cartridge, it's the distillate.
7 And then they add flavorings to it. They're called
8 terpenes. That's just the industry term for them. They
9 add terpenes to it, and sometimes those have solvents in
10 them.

11 So they had added flavors that they've used in
12 other states that have passed testing from a reputable
13 brand. And by Missouri standards, which are lower for some
14 of those solvents, these products failed testing, due to
15 the added terpenes, (indicating quotes), flavorings. And
16 so we had to remediate those products.

17 Q And on those flavorings, are you aware of any
18 regulation that requires that the flavorings be purchased
19 from Missouri companies?

20 A No. I don't think there are Missouri companies
21 that sell them.

22 Q Okay. So all the flavorings are going to come
23 from out of the state, if not other countries?

24 A Yes.

25 Q In fact, are there flavorings that sometimes come

1 from other countries?

2 A They -- the -- where they source their material
3 from, I'm not sure. But the companies are normally in the
4 U.S. or Canada, that we get the flavorings from.

5 Q All right. But the testing caught, in the
6 instance you're talking about, something wrong with the
7 flavorings?

8 A Yeah. I think it was ethyl acetate, maybe. We
9 could go back and look it up, I'm sure.

10 Q And just to make it really clear for those of us
11 who aren't chemists, you were talking about a failure on
12 the Midwest side with regard to butane?

13 A Uh-huh.

14 Q And I think what I heard you saying is: A little
15 bit of butane won't hurt you, but there's some level of
16 butane that's unacceptable?

17 A Yeah. My -- to my knowledge, I think Missouri's
18 regulations are 800 parts per million; and in Oklahoma it's
19 1,600 parts per million; and in Colorado it's even higher
20 above that. So there is an amount that is allowed in each
21 product. But, obviously, the product we made was over the
22 allotment in Missouri.

23 Q And so, just to wrap all that up, as the general
24 manager, are you aware of any product, whether it was
25 Midwest Magic brand, Conte brand, white label brand, that

1 was ever sent to a dispensary without compliance testing?

2 A No. That would be impossible.

3 Q Because of the Metrc tagging you were talking
4 about?

5 A Yes. You need to, through the Metrc software,
6 transfer product from one place to another. And the button
7 literally doesn't work to transfer it if it doesn't have
8 test passed when you're trying to send it to a dispensary.

9 Q All right. And I said dispensaries. Now, you
10 were talking about the distillate under the Conte brand.

11 A (The witness nodded his head.)

12 Q And some of that goes to other manufacturers?

13 A Yes.

14 Q And so if it's going to another manufacturer, are
15 you doing the final compliance testing?

16 A No, because the final compliance testing requires
17 you to take a certain percentage of the entire batch, to
18 ensure that it's, you know, enough and they get a
19 representative sample. And so you only have to submit the
20 R&D test. And it's the same when we buy flower for our
21 brand, to come and process. So we can buy, you know,
22 something from a cultivator, some flower or material, and
23 it can come in without a test on it.

24 Q And so when distillate is sent to other
25 manufacturers, they're required to do testing before it

1 goes out?

2 A Yes, because often flavors are added or you put it
3 in a cartridge that might have heavy metals. And so every
4 time you create a final product, that has to then get
5 compliance tested before sending it to a dispensary.

6 Q So we submitted some exhibits to the Commission.
7 One was Exhibit 29, which was a spreadsheet on some failed
8 testing, and we couldn't print it out. But do you know
9 what I'm talking about? Do you remember that?

10 A Yeah.

11 Q Okay. And I can show it to you on an iPad. But
12 if you can, can you tell the Commission what Exhibit 29 is?
13 That was the failed testing. Do you need to look --

14 A Yeah.

15 COMMISSIONER ILES: So where are you getting the
16 number 29? Is that something --

17 MR. HATFIELD: P 29 is an exhibit that we
18 submitted to the Administrative Hearing Commission, but
19 it's a spreadsheet that doesn't really print in a way that
20 can be used.

21 COMMISSIONER ILES: Yeah. I see it now in our
22 records.

23 MR. HATFIELD: Josh, do you know what I'm talking
24 about?

25 MR. DOUGLASS: I do, yes.

1 MR. HATFIELD: May I approach the witness,
2 Commissioner?

3 COMMISSIONER ILES: Yes.

4 (Mr. Hatfield handed the witness an iPad.)

5 BY MR. HATFIELD:

6 Q Whenever you're ready. I'm just wanting you to
7 tell the Commissioner a little bit, what Exhibit P 29 is.

8 A Yes. This is just a list of every failure that
9 we've had or failure that's in our current inventory.

10 Q And what generally does it show? There's not a
11 lot on there. And the Commissioner, I think, has it up on
12 her screen. So, if you could -- I don't have it.

13 COMMISSIONER ILES: Yeah. I have it on my screen
14 right now, from our system.

15 BY MR. HATFIELD:

16 Q If you can just walk -- kind of walk her through
17 it and tell her what the columns are and what they show.

18 COMMISSIONER ILES: And just for the record, I'm
19 looking at a document that is in Excel. And it looks like
20 the heading on Column A says Tag. Is that what yours says?

21 THE WITNESS: Yep.

22 COMMISSIONER ILES: And then the column next to
23 that says Source Harvest(s).

24 THE WITNESS: Uh-huh.

25 COMMISSIONER ILES: And the first number on Line 2

1 is 1A40C0300. I don't know. A bunch of zeros. 44C, and
2 it goes on. Am I looking at the right thing?

3 THE WITNESS: Yes.

4 COMMISSIONER ILES: Okay.

5 MR. HATFIELD: Well, you may have just
6 accomplished what I wanted to accomplish.

7 BY MR. HATFIELD:

8 Q Anything else the Commissioner needs to know as to
9 what she's looking at there?

10 COMMISSIONER ILES: Well, I don't know what that
11 means, so I'm just making sure we have the right document.

12 BY MR. HATFIELD:

13 Q There we go. Explain to her what all that means.

14 A That is the Metrc tag number that's associated
15 with each product. And then the Source Harvest is Metrc
16 numbers associated with every plant that went into that
17 finished product. So that's the seed-to-sale tracking that
18 tracks it from plant all the way to finished product.

19 Q So in Ms. Kirkweg's affidavit -- you've looked at
20 that, right?

21 A Yes.

22 Q She talks about the State's seed-to-sale tracking
23 system and how it tracks through. Is that what you're
24 referring to there?

25 A Yes.

1 Q In Metrc. And so No. 29 is which of the testing?
2 Is this the R&D or the final compliance?

3 A This would be final compliance.

4 Q And, based on your knowledge, is this document
5 that is Exhibit P 29 every final compliance test that
6 resulted in a failure?

7 A I don't think so. I don't think this includes
8 ones that we've remediated and then have been test-passed
9 and we've sold to dispensaries.

10 Q Got it. So these failed and were either destroyed
11 or still quarantined, right?

12 A Yes.

13 Q And how many are there?

14 A 16.

15 MR. HATFIELD: All right. Move the admission of
16 Petitioner's 29, Commissioner.

17 COMMISSIONER ILES: Mr. Douglass.

18 MR. DOUGLASS: No objection.

19 COMMISSIONER ILES: Exhibit 29 is received.

20 (PETITIONER'S EXHIBIT 29 WAS RECEIVED INTO
21 EVIDENCE AND MADE A PART OF THIS RECORD.)

22 BY MR. HATFIELD:

23 Q All right. Mr. Maritz, I've talked to you a
24 couple times about an affidavit filed by Ms. Kirkweg. Are
25 you familiar with that?

1 A Yes.

2 Q And is there still a copy up there, or did
3 Ms. Kirkweg take it with her?

4 A It's here.

5 Q Okay. Let me ask you just a couple of questions.
6 Specifically, Ms. Kirkweg and I talked while you were in
7 the hallway, about Paragraph 25.

8 A Yes.

9 Q And are you familiar? Have you looked at
10 Paragraph 25?

11 A Yes.

12 Q Can you just -- and if you need to refer to it,
13 fine. But can you just tell the Commissioner, from your
14 perspective, what happened there with respect to the
15 incident described in Paragraph 25a? Let's start with a.

16 A Yeah. So you can see that the concentrate that
17 we're referring to is from Package, you know, 1A40, blah,
18 blah, blah, 00001. That's literally from the very first
19 package that we ever created at the lab. This is from
20 December 2021. So it was before we had ever sold a product
21 at the lab.

22 Q Hold on one second. So you're referring to, about
23 halfway down there's (package #0001)?

24 A Yes.

25 Q Hold on a minute.

1 MR. HATFIELD: It's all the way on the left side.

2 COMMISSIONER ILES: I see it.

3 BY MR. HATFIELD:

4 Q So that was your first one off the line, if you
5 will?

6 A That was the first one we had ever created. It
7 was made from -- the first number there is Package
8 No. 1033, which contained 2,900 grams of bud flower
9 material. That was a tag that we had obviously bought from
10 someone else because we don't grow flower. And so we
11 turned it into our first package ever.

12 Then we took 4 grams of that concentrate, and we
13 added 38,000 grams, basically, to it. This was our process
14 with Conte, before we had really began operations and had
15 things really like flowing through the lab, doing things
16 every day. We had signed a deal with Conte. They had been
17 doing an approved process with their distillate and another
18 manufacturer, in a Heya facility.

19 They had, you know, problems, whatever. And they
20 signed a deal with us and came over. And so we did a
21 process that we believed was approved by the State. And
22 I'm sure we have emails talking about it. This was before
23 the THC-A process even existed. And so we added CBD
24 distillate to it and made -- got that final weight.

25 Q Okay. There are several things that we need to

1 break down. So you talked about the bud flower and having
2 a Metrc tag, meaning that it came from a Missouri licensed
3 cultivation facility?

4 A Yes.

5 Q Right?

6 A Uh-huh.

7 Q You talked about Conte previously having a
8 contract with a different manufacturer, meaning a Missouri
9 licensed manufacturing entity?

10 A Yes.

11 Q And that's Heya, you talked about?

12 A Yes.

13 Q Okay. And then you talked about: this was before
14 the THC-A process and involved CBD. So how does that
15 relate, if at all, to this allegation of inversion?

16 A Well, I mean, it's a different process. At this
17 point, back in 2021, under those current rules, it was
18 legal to convert CBD distillate to THC. So we would have
19 CBD distillate, which also at the time we didn't have to
20 track with a Metrc tag, but we had COAs of what was coming
21 in. And then they would convert it to THC with a small
22 amount of concentrate added. And, at the time, that was
23 what we thought completely legal and approved by the State.

24 Q Let's look at Exhibit 12 for a moment. So
25 Exhibit 12, for the record, P 12, appears to be an email

1 from Ms. Rachael Herndon to Heather Bilyeu. Do you know
2 who Heather Bilyeu is?

3 A Yes.

4 Q And can you tell the Commissioner who she is?
5 Tell the Commissioner, please, who she is.

6 A She is our -- what's called a CO. I'm not exactly
7 sure what that stands for, but she's our representative
8 from the State who will come out and do site visits, who we
9 ask questions to and interface with.

10 Q And it looks like you're copied on this email. Is
11 that your email address there?

12 A Yes.

13 Q And is this an email that you received at some
14 point?

15 A Yes.

16 Q Yeah.

17 MR. HATFIELD: So might as well, before I forget,
18 move the admission of Exhibit P 12.

19 COMMISSIONER ILES: Mr. Douglass, any objection?

20 MR. DOUGLASS: No objection.

21 COMMISSIONER ILES: Exhibit P 12 is admitted.

22 (PETITIONER'S EXHIBIT 12 WAS RECEIVED INTO
23 EVIDENCE AND MADE A PART OF THIS RECORD.)

24 BY MR. HATFIELD:

25 Q And look at Exhibit P 13. Are you familiar with

1 Exhibit P 13?

2 A Yes.

3 Q And what is this?

4 A This is an SOP, standard operating procedure, for
5 Delta Extraction, in order to use industrial hemp in our
6 processes and products.

7 Q Okay. And on Exhibit P 13, under Scope, it talks
8 about propagation under Ozark Mountain and Licensed hemp-
9 producing partners will occur off-site. Don't think we're
10 arguing about that today.

11 A No.

12 Q All right. Next says: Only tested hemp-derived
13 non-psychoactive, federally legal materials, ensured to be
14 below .3 percent THC, will be -- or may be accepted for
15 processing on-site at MAN00002. Do you see where I am?

16 A Yes.

17 Q Why was it important in these processes, or was
18 it, that the hemp-derived materials be below .3 percent
19 THC?

20 A It's my understanding that, because THC is the
21 regulated molecule, and that comes from marijuana, that we
22 could bring in federally legal a/k/a hemp-derived,
23 non-psychoactive materials into the lab, 'cause they can be
24 traded state to state, they move all over the country,
25 there's a variety of products out there that you can just

1 walk into a store and buy, that have those, including CBD,
2 CBN. There's a whole variety of them; THC-A.

3 Q And, in fact, did a facility that you oversaw
4 bring in any hemp-derived products that were not below
5 the .3 percent THC?

6 A No.

7 Q And then it goes on to say: Industrial hemp will
8 be processed on-site, stored and processed in separate,
9 designated spaces. And there's more here. Did Delta, in
10 fact, follow this industrial hemp process that was
11 communicated to the State?

12 A Yes.

13 MR. HATFIELD: And, Commissioner, P 13 is an
14 attachment to P 12. But I want to move its admission
15 separately. So move the admission of Petitioner's 13.

16 COMMISSIONER ILES: Mr. Douglass.

17 MR. DOUGLASS: No objection.

18 (Discussion off the record.)

19 COMMISSIONER ILES: I forgot to say that 13 has
20 been received.

21 MR. HATFIELD: 13 has been. Thank you.

22 COMMISSIONER ILES: We've got 12 and 13, yeah.

23 MR. HATFIELD: All right.

24 (PETITIONER'S EXHIBITS 12 AND 13 WERE RECEIVED
25 INTO EVIDENCE AND MADE A PART OF THIS RECORD.)

1 BY MR. HATFIELD:

2 Q So, Mr. Maritz, there are also -- if you could
3 look at Exhibit 8, 9, 10, and 11 and, if possible, describe
4 all of those in one lump.

5 A Yeah. So these are Conte's extraction SOPs for
6 creating their distillate. It goes through a variety of
7 processes, from actually extracting the material with
8 ethanol, to then going through the wipe film and cleaning
9 the crude oil, and then leading to decarboxylation, which
10 turns THC-A into THC, creating a finished product.

11 Q Okay. And are these all SOPs that you sent to the
12 State?

13 A Yes.

14 Q And are these all the SOPs that were being
15 followed at Delta Extraction?

16 A Yes.

17 MR. HATFIELD: Move the admission of
18 Petitioner's 8 through 11.

19 COMMISSIONER ILES: Mr. Douglass.

20 MR. DOUGLASS: I just want to make sure I
21 understand. I heard the testimony as: these are Conte's
22 SOPs, not Delta Extraction's SOPs.

23 THE WITNESS: Yes. They wrote these SOPs, and it
24 was their -- it was under their direction to follow them
25 and actually create the distillate. We didn't have Midwest

1 Magic employees following -- doing these.

2 MR. HATFIELD: So I don't know if there's an
3 objection to the admission or not. If there is, I can have
4 the witness elaborate.

5 COMMISSIONER ILES: Are you saying there's
6 inadequate foundation? I'm not sure.

7 MR. DOUGLASS: Yeah. I was just trying to
8 determine what the foundation was, because the -- insofar
9 as these are a third-party's SOPs, I don't see how they're
10 relevant today.

11 COMMISSIONER ILES: Okay. I'm confused. Isn't
12 Conte part of the company that's at issue here?

13 MR. HATFIELD: Could I ask a couple questions of
14 the witness, Commissioner?

15 COMMISSIONER ILES: Yeah.

16 BY MR. HATFIELD:

17 Q So, just to kind of wrap this into context, I
18 think you already talked about this, but Conte brand asked
19 you to manufacture product?

20 A Yes. And in terms of actually creating the
21 distillate, I guess, technically, Conte is a contractor
22 that we use to run these machines.

23 Q And so they tell you how they want the stuff
24 produced?

25 A Yes.

1 Q Through the SOPs?

2 A Uh-huh.

3 Q But you're the manufacturer, per the license?

4 A Yes.

5 MR. HATFIELD: Okay. So, I move the admission
6 of -- oh, wait. One more question.

7 BY MR. HATFIELD:

8 Q And you're familiar with these SOPs?

9 A Yes. I haven't personally ran the machines, but
10 I've seen these SOPs.

11 Q And you were aware that these were the SOPs that
12 were being used to produce the Conte product, in your role
13 as the manager of the facility?

14 A Yes.

15 MR. HATFIELD: All right. So, I move the
16 admission of 8 through 11.

17 COMMISSIONER ILES: Mr. Douglass, do you object?

18 MR. DOUGLASS: I still don't see the relevance,
19 and I guess I still object on the basis of: these are a
20 third-party company's SOPs.

21 COMMISSIONER ILES: I'm going to receive the
22 exhibits. That's -- Exhibits 8, 9, 10, and 11 will be part
23 of the record.

24 (PETITIONER'S EXHIBITS 8 THROUGH 11 WERE RECEIVED
25 INTO EVIDENCE AND MADE A PART OF THIS RECORD.)

1 MR. HATFIELD: Okay. Thank you, Commissioner.

2 BY MR. HATFIELD:

3 Q So, Mr. Maritz, I think we were talking about the
4 affidavit, and we talked about that first incident, and
5 then we used that to sort of talk through. So let's do it
6 this way: In Paragraph 25, Paragraphs a, b, c, --

7 A Uh-huh.

8 Q -- are those all discussing the Conte brand
9 production?

10 A Yes.

11 Q Do any of those have anything to do with the
12 Midwest brand production?

13 A No.

14 Q And Midwest brand was, up until this order of
15 suspension, being produced at the facility, right?

16 A Yes.

17 Q So, can you tell the Commissioner -- on the
18 March 25th, 2022, Part b there, tell the Commissioner what
19 happened there.

20 A Yeah. So, this was from the very first batch of
21 vape cartridges made for Conte, so this was the first time
22 that we were turning something from a bulk package into
23 individual packages in Metrc. And we had -- I can't
24 remember -- maybe 15 different product SKUs to do this
25 with, so 15 different flavors and stuff.

1 When we entered it in, we had made like a typing
2 error. With the actual amounts, we did the math wrong
3 because you have to add a certain amount of flavoring to
4 the distillate to get it right. So we had entered in the
5 math wrong. We had tried to change it.

6 Per Metrc's rules, you're only allowed to change
7 it once. So we couldn't go back into the system and
8 correct it again. And so it was just a mistake of doing it
9 the first time, and that led to incorrect weights on
10 packages.

11 Q All right. And then the next one in "c" is
12 November 11th of 2023. Can you explain what happened
13 there?

14 A Yes. This is the --

15 Q And for the record the date is wrong. But go
16 ahead.

17 A Yeah. This is the CBD conversion that I was
18 talking about earlier. So the way that process would work
19 is: we would take some distillate or concentrate, THC, add
20 CBD to it, and then follow Conte's proprietary process,
21 which they were doing at other manufacturers and was also
22 approved by the State.

23 Q And in reading through that, you know, I think you
24 already said that these were all on the Conte SOPs --

25 A Uh-huh.

1 Q -- processes. Now, are you aware of which
2 products have been administratively held by the Department?

3 A Yes.

4 Q Have they only held the Conte product?

5 A No. They've held all product.

6 Q Including the Midwest Magic production?

7 A Yes.

8 Q Okay. And then going on, Paragraph 26, there's
9 two issues here about what is described as allowing product
10 to enter without being compliantly tested. So Ms. Kirkweg
11 talked a little about that. Can you explain what happened
12 in those two instances?

13 A Yeah. So in both of these instances, these were
14 just like misplaced product or counting errors. Obviously,
15 they were both a while ago. I don't remember what
16 specifically happened. But, like I mentioned earlier, we'd
17 make 40- to 50,000 cartridges at a time, about 20 flavors
18 at a time, and we'd package those all in, you know,
19 two days or something. And so, when you're dealing with
20 that many vape cartridges, human error just tends to
21 happen.

22 On this first -- Paragraph a, 100 vape cartridges
23 is an important number, because the machine that we
24 actually use to fill the vape cartridges fills them 100 at
25 a time. So we'll fill 100 vape cartridges, put the caps

1 on, and put it in a box.

2 More than likely what happened is that we just put
3 that box with another flavor, instead of the correct flavor
4 that it was, and then we ended up discovering our error
5 later. And we probably had to do a corresponding
6 adjustment. So we took 100 down from 1 package and added
7 100 to another.

8 We have counts of how many we produce. We get
9 them tested. After the testing comes back, we do quality
10 control and we clean all the carts and put them in their
11 packages. When we do that process, obviously, there's
12 going to be some error of, you know, cartridges that get
13 smushed in the "Cat" machine or are dirty. For whatever
14 reason, they don't pass our quality control standards.

15 And so, on Item b, when it was adjusted by 40 vape
16 cartridges a couple months after we had actually got this
17 tested, what probably happened was: we were filling up
18 boxes, up -- you know, if we produced 3,000 cartridges of
19 one flavor, we put it in boxes of 100, and then we have
20 30 boxes of that. If we put 110 instead of 100 in four of
21 those boxes and we think that each of them have 100 in
22 them, then we're going to have 40 over, of what we thought.
23 And we thought that we adjusted the number down
24 accordingly, because there was ones that we had to waste
25 and weren't up to quality control standards.

1 So it's a matter of having really big volumes run
2 through the labs and humans counting them and putting them
3 in boxes, and they're not always 100 percent right after
4 doing the same thing over and over again, all day.

5 Q And those two incidents that are identified there,
6 you self-reported those, correct?

7 A Yeah. Every adjustment that we make, the
8 Department has access to. I don't know how they get -- if
9 they get notified if it's above a certain percentage, or
10 how that works. But this is the first time that we've
11 ever -- that I've ever seen these issues arise. And we've
12 made other package adjustments other than these, just
13 because sometimes counting is -- can be hard.

14 Q Well said. Okay. So maybe to bring some of this
15 home, you heard Mr. Pearson talk about THC-A or THC of less
16 than -- hemp-derived products with THC of less
17 than .3 percent, right? And that discussion -- that
18 product was part of the Conte brand, correct?

19 A Yes.

20 Q And was it involved in any of the other
21 production, outside of the Conte brand?

22 A No.

23 Q And did, at some point, production of the Conte
24 brand using those processes stop?

25 A Yes.

1 Q When?

2 A Right before August 1st, when the rules

3 specifically outlaw it.

4 Q Okay. So there was a new rule effective

5 August 31st (sic)?

6 A Uh-huh.

7 Q And you were aware of that?

8 A We were aware of that, and we're done producing

9 Conte.

10 Q I might have got that date wrong, when I just

11 said -- I don't know what I just said.

12 A Yeah. July 31st, --

13 Q Okay.

14 A -- when it officially went into --

15 Q Nothing done using that Conte process after

16 July 31st?

17 A Correct.

18 Q Any intention to resume producing these, using

19 Conte processes?

20 A No. We're done with Conte.

21 Q Okay, all right. And prior to receiving this

22 order of suspension, did the Department ever ask you for

23 any information about the Conte brand process?

24 A No. They had obviously responded to our SOPs a

25 couple times and asked us to make changes, but I never had

1 any idea that it was an issue until they knocked on our
2 door and suspended us.

3 MR. HATFIELD: Can I have just a minute,
4 Commissioner? We don't need a break. I just need to --

5 COMMISSIONER ILES: Yes.

6 BY MR. HATFIELD:

7 Q So how much product is, in whatever measure you
8 can identify it, currently on administrative hold?

9 A There's about 1,100 liters of distillate. Before
10 this suspension happened, those would probably go for
11 \$12,000 a liter. And then we have about \$300,000 worth of
12 Midwest Magic products. So about -- probably close to
13 12,000 units that go anywhere from \$20 to \$35 a unit.

14 Q And what you've just described is the product
15 that's where, physically?

16 A It's in the facility, in Robertsville.

17 Q And maybe you don't know the answer to this
18 question. But do you have an understanding of whether
19 there is other product, outside of your facility, that is
20 currently being held under administrative hold?

21 A Yes. All the dispense -- or all the products that
22 the Midwest Magic brand has sold to dispensaries is
23 currently on hold. So whatever they haven't sold through
24 to consumers and patients. And then since we did the
25 THC-A, got the THC-A process approved, we've sold about

1 700 liters or so, to other manufacturers.

2 And so that -- I don't have numbers on how many
3 products that would be made into; but that could make, you
4 know, millions of packs of edibles. And all those,
5 everything associated with those tags, to my understanding,
6 are on administrative hold.

7 Q So some product in your facility, that you talked
8 about, right?

9 A Uh-huh.

10 Q Some product in the hands of other manufacturers,
11 that would be tested before it goes out to dispensaries,
12 correct?

13 A Yes.

14 Q And then some product, that's post-compliance
15 testing, sitting at dispensaries, right?

16 A Yes.

17 MR. HATFIELD: I don't have any further questions
18 of this witness.

19 COMMISSIONER ILES: Cross-examination.

20 MR. DOUGLASS: Thank you, Commissioner.

21 CROSS-EXAMINATION BY MR. DOUGLASS:

22 Q It's Mr. Maritz, right?

23 A Yes.

24 Q I want to make sure I say that correctly. Good
25 morning. How long have you worked for Delta Extractions?

1 A Since it started.

2 Q And when was that?

3 A We sold our first product in April of '22, so --

4 and we started operations close to December of '21.

5 Q December 2021?

6 A I believe so (nodding).

7 Q Okay. What products does Delta Extractions make?

8 A We have two brands. We have two different

9 processes of extraction. We make, under the Conte brand,

10 distillate that we sell wholesale to other manufacturers.

11 The Conte brand also has vape pens and some gummies. And

12 then under the Midwest Magic brand, which we use butane

13 extraction for, we have concentrates, vape pens, some

14 gummies and some drinks as well.

15 Q Have you always made that many products?

16 A No. We've slowly added more on, as we've gotten

17 more mature and gone down the road.

18 Q And how long has Conte been produced within your

19 facility?

20 A Since we opened.

21 Q Okay. All of your products that you produce are

22 intended to be ultimately ingested by consumers and

23 patients; is that correct?

24 A Yes. And there might be some technicalities with

25 "ingested," which could, you know, mean eat versus --

1 obviously, you don't eat the vape pens.

2 Q Sure. You smoke those?

3 A Yes.

4 Q They're converted to a vapor and then you inhale
5 that, correct?

6 A Correct.

7 Q That's what I've heard. Which of your products
8 contain tetrahydrocannabinols?

9 A That would be the vape cartridges on either brand,
10 THC, and any of the infused products. So the edibles or
11 the drinks. THC is the active version. So that's what
12 actually gets you high. You can eat it. It will get in
13 your body and get you high. The concentrates on the
14 Midwest Magic brand are THC-A. That's what the plant
15 grows. That's why, if you were to pick up some flower or a
16 bud and eat it, you wouldn't get high.

17 Q Right. Doesn't THC-A turn to THC when heat is
18 added?

19 A Yes.

20 Q So, if you dip a pre-roll in THC-A and then smoke
21 that THC-A, it converts to THC, an intoxicating substance;
22 is that right?

23 A Yes.

24 Q Okay. So who in your facility is responsible for
25 Delta Extraction's Metrc obligations?

1 A That would have been our inventory control
2 manager, Charlie Kistner.

3 Q Is Charlie still employed by Delta Extractions?

4 A Yes. It depends how today goes, if I have to let
5 everyone go right after this.

6 Q And have you spoken with Charlie about the
7 disparities that you went over earlier with Mr. Hatfield?

8 A Yes.

9 Q When did you review the affidavit, disparities
10 that you all discussed earlier?

11 A I believe that we got the affidavit on Friday
12 night and I talked to Charlie the next day, on Saturday.

13 Q Did you look up the Metrc information, yourself?

14 A It was all lined out there, so I did not. I was
15 on Metrc and I had looked at our holds and stuff, but I
16 didn't go through the actual -- click on the tags myself,
17 no.

18 Q Can you pull that affidavit up again?

19 A Yeah.

20 Q Let's just start with Paragraph 25. Start with
21 Paragraph a. So maybe you already covered this. I
22 apologize. But how did eleven hundred -- I'm sorry. How
23 did 4 grams of concentrate turn into 38,698 grams of
24 distillate? That was a typo, I think you said.

25 A No. That was weight increased by adding CBD

1 distillate.

2 Q CBD distillate?

3 A Yes.

4 Q Is that indicated in Metrc that you added the CBD
5 distillate?

6 A No. Like I said, this was the very first package
7 that we had ever made or created. So we weren't exactly
8 sure what to write, every single time.

9 Q Who created the Tag 0003?

10 A That probably would have been Charlie Kistner.

11 Q You don't know, though, do you?

12 A I'm almost certain, but I don't know for sure.

13 Q You had a security system on-site when this
14 occurred; is that right?

15 A Yes.

16 Q Every employee within the facility has a security
17 ID; is that right?

18 A Correct.

19 Q And that tracks employees' movements through
20 secured areas of the facility; is that right?

21 A Correct.

22 Q So every time you go through a locked door,
23 there's a record that Employee A entered the lab or the
24 safe or -- where else? Where else do employees get
25 tracked?

1 A Every door has a keypad associated with it. So
2 every door that they scan in or out of.

3 Q So, presumably, there would have been records of
4 whomever was accessing Metrc, of entering the room where
5 the Metrc device was located?

6 A Yes.

7 Q Right. So where do you put in your Metrc figures?

8 A We have a computer in our office.

9 Q Okay. And is there an access log for the office?

10 A Yes.

11 Q Do you have access logs going back tp March 15,
12 2022?

13 A Yeah. We had pulled an access log going back as
14 far as we could. I can't remember the specific date when
15 the State visited us.

16 Q Do you have that access log currently?

17 A Not on me but on my computer.

18 Q Do you have any security camera footage of the
19 facility from March 15th, 2022?

20 A No. We're only required to keep security camera
21 footage for the last 60 days.

22 Q What employees were on-site on that day, March 15,
23 2022?

24 A I wouldn't know, off the top of my head.

25 Q So go to Paragraph 25 b. So this is March 25th,

1 2022. What employees were in the facility that day?

2 A I don't even know what day of the week it is. I
3 wouldn't be positive. But I assume, at least Charlie
4 Kistner, probably myself.

5 Q You would have records of who was there, correct?

6 A Yeah. Sometimes it does happen that one person
7 can scan in the door and then there's another person who
8 works there right behind them. So every person doesn't
9 have to close the door, scan in again, to get through.

10 Q Is that permitted by the regulations?

11 A I don't remember seeing any regulation that says
12 every person has to scan in individually, but I'm not sure.

13 Q I don't mean to belabor the point. But I assume
14 you have payroll records that would show who was working
15 that day?

16 A Yes.

17 Q So, if we were looking into the events surrounding
18 the March 15th, 2022, Metrc input or the March 25th, 2022,
19 Metrc input, we could at least go to your payroll records
20 and see who was in the facility that day?

21 A Oh, yes. And Metrc has the agent ID that
22 performed -- of the person who performed the action
23 associated with it. So you can actually see, by going on
24 Metrc and clicking on this tag, who performed that action.

25 Q Okay. Have you done that for these transactions?

1 A No, I haven't. At this time Charlie would have
2 been the only person doing those.

3 Q So, on Paragraph b, we have 4,000 1-gram vape
4 cartridges.

5 (Cell phone ringing.)

6 BY MR. DOUGLASS:

7 Q How are 4,000 1-gram vape cartridges created from
8 1,100 grams of distillate?

9 A This was a typing error. This was the first time
10 that we were doing the math of the weight of the terpenes
11 added to the actual vape cartridges. So you have, say, a
12 liter of oil, and then you add 10 percent terpenes to it.

13 So he had made the mistake. We had 4,000 to begin
14 with. He had entered in 1,100 grams of distillate -- I
15 think is the weight of the terpenes. And he didn't -- he
16 realized his mistake and tried to adjust it, but didn't do
17 it correctly. Again, this was in the very first run of
18 cartridges we ever produced.

19 Q When you say he, who is he?

20 A Oh, sorry. Charlie.

21 Q So Charlie was counting as well as entering the
22 Metrc figures?

23 A No. He would have just gotten the information and
24 entered the Metrc figures.

25 Q So somebody else made the counting mistake?

1 A Yeah, probably.

2 Q And so who conducted the recount?

3 A I wouldn't be able to tell you. It's over a year
4 ago.

5 Q Sure. And so the only reason we know there was a
6 recount is because Metrc says there was; is that right?

7 A Yes.

8 Q Do you have security footage of the recount?

9 A No. The security footage, like I said, only goes
10 back 60 days, not a year.

11 Q Do you have any other records that we we could go
12 look at to see who did the recount and why they did a
13 recount?

14 A I'm not really sure how we could go back and
15 physically know who recounted them. But my guess is that
16 it would have been someone at the facility getting these
17 ready for testing or moving the product, and he realized
18 his error.

19 I'm not sure how it actually happened. We've made
20 a ton of products since then. We've gotten our process a
21 lot better with counting and where we store things and what
22 boxes we put them in and stuff. So I couldn't tell you the
23 specific product.

24 Q If you go to 25 c, we have 5 grams of distillate
25 that was converted to 130,000 grams, and this says: by

1 adding CBD; is that correct?

2 A Yes.

3 Q Let's talk about testing. When you do R&D
4 testing, the Department doesn't select what gets tested,
5 correct?

6 A Correct.

7 Q You select what gets tested, correct?

8 A Yep.

9 Q Is that a -- that's a random sampling?

10 A Yes.

11 Q And by random, you just go pick out of a batch, or
12 how does that occur?

13 A Yeah. It depends on the process and what product
14 we're making, obviously. But for distillate specifically,
15 it would come out of the falling film wiping machine, and
16 we'd pull a sample at some random interval during -- in the
17 middle sometime.

18 Q So, on this occasion, you random-sampled and you
19 sent it to two different testing facilities, correct?

20 A Yes.

21 Q And why two?

22 A We see discrepancies with the potency of it. So a
23 testing facility can test basically the same batch and give
24 you 4 percent off or so, of THC. And at this point it was
25 so early in our, you know, life span of being licensed and

1 we were trying out different testing facilities, and we
2 just wanted to see who -- what would come back from who and
3 what the differences were between facilities.

4 Q So the testing results here show that this
5 130,000 grams of distillate, 5 grams of which was THC, had
6 a high concentration of THC and a very low concentration of
7 CBD?

8 A Correct.

9 Q How is that possible?

10 A The CBD was converted to THC.

11 Q Oh, I see. So the CBD, when it got to the testing
12 facility, was now tetrahydrocannabinol?

13 A Yes. We had put that through the process to turn
14 it into THC.

15 Q And so that was THC which was derived outside of
16 Missouri's regulated seed-to-sale process, correct?

17 A Yes. That was using federally-legal hemp, CBD
18 extract.

19 Q Sure. That -- you take hemp, you put it through a
20 chemical process, and you create CBD, correct?

21 A Yeah. I can't share all the details of the
22 process, but it's mostly just heat.

23 Q So what's mostly just heat?

24 A The conversion.

25 Q The conversion from CBD to THC?

1 A Yes.

2 Q Right. So the CBD is created from a plant which

3 is grown outside of Missouri's regulated market, correct?

4 A A hemp plant, yes.

5 Q A hemp plant doesn't have a Metrc tag, correct?

6 A Correct.

7 Q And then the hemp plant is turned into CBD oil,

8 correct?

9 A Correct.

10 Q Then the CBD oil is turned into THC, correct?

11 A In our facility, correct.

12 Q And then the THC is added to other THC, which did

13 derive from a plant with a Metrc tag, correct?

14 A Correct.

15 Q And then that total THC is then used to create

16 products subsequently that are ingested by Missouri

17 patients, correct?

18 A Yes. They get tested and then they get ingested

19 by Missouri. And I believe all of these things in question

20 were completely sold and distributed throughout Missouri

21 and consumed.

22 Q Let's go to 26 a. On January 16th, 2023, that was

23 this year, you had 2,915 vape cartridges and they were

24 tested the day after production; is that right?

25 A Yes.

1 Q And five months later you found a box of that same
2 batch of vape cartridges and then added it to the Metrc
3 tag; is that right?

4 A Yes.

5 Q Who found that box?

6 A Probably one of our packagers who package up
7 orders. They'll go through and open the boxes of product,
8 as we sell through them, and then realize that there were
9 more in there than we thought there were.

10 Q You said probably. You don't know who found the
11 box, do you?

12 A No. I don't recall.

13 Q Do you have a record of who found the box?

14 A Probably not. We have a record of who entered in
15 the adjustment.

16 Q In Metrc?

17 A In Metrc (nodding).

18 Q Do you have any security footage showing the
19 discovery of this box?

20 A No. Again, this would have been before the
21 60 days. So too long ago.

22 Q The box was found on June 26th, 2023, correct?

23 A Oh, yes.

24 Q That was three weeks ago.

25 A Okay, yeah. Sorry. My mistake.

1 Q Oh, I'm sorry. It was June 26th, 2023.

2 MR. HATFIELD: I think it's a little more than
3 three weeks ago.

4 MR. DOUGLASS: We're lawyers; we're not
5 mathematicians.

6 MR. HATFIELD: Stipulated.

7 BY MR. DOUGLASS:

8 Q I apologize for misstating. It was June 26, 2023,
9 correct?

10 A Uh-huh, yeah, correct.

11 Q According to Metrc?

12 A Yes.

13 Q Do you have any independent knowledge of this, the
14 finding of this box?

15 A No. I think this was a relatively simple thing
16 for Charlie and our packagers to handle. I don't recall
17 specifically what this happened -- or this happening or
18 what transpired that day. But they know that if their --
19 they realize that their counts are off, then they should go
20 in and adjust it.

21 Q When -- is it routine to find product five months
22 after production and testing?

23 A Yeah. We do have to make a certain amount of
24 adjustments. Because we'll package things into boxes of
25 100 or 400, and, as we're doing that, if we accidentally

1 put in 95 or, you know, 110 instead, and we count those
2 boxes as 100 instead of 110, then, as we're going through
3 and selling through products, we'll reopen those boxes and
4 discover there's more than we thought or less than we
5 thought. And then -- yeah. And then we'll make an
6 adjustment accordingly.

7 Q So aren't you required to have monthly inventory
8 audits?

9 A Yes.

10 Q And why does it take five months, then, to find
11 missing product?

12 A Because we have so many thousands of boxes and
13 products. When we package stuff up and write that there's
14 100 on the box, we count those boxes as 100 in the
15 inventory. It would take most of the week to do an entire
16 audit and count every single product, one by one, and open
17 the boxes, repackage them. That would just be a gigantic
18 use of time.

19 Q It would be too much work?

20 A Yes.

21 Q On July 14th, 2022, you made 318 1-gram vape
22 cartridges from 468 grams of marijuana product; is that
23 right?

24 A Yes.

25 Q So you started with 468 grams and ended with

1 318 grams, correct?

2 A Yes.

3 Q Of all of the instances we've discussed today,
4 this is the first time you started with more than you ended
5 up with, correct?

6 A Yes.

7 Q It went out for testing the same day that you
8 created it; is that right? You have to say -- I'm sorry.

9 A Yes.

10 Q All right. And then you found 40 cartridges in
11 October of 2022?

12 A Yes.

13 Q Who found those cartridges?

14 A I couldn't tell you.

15 Q Again, do we have any security footage of who
16 found those cartridges?

17 A No.

18 Q And would there be access logs that would show who
19 was in the building that day?

20 A Yes.

21 Q Unless they doubled up when they went in, two at a
22 time?

23 A Yes.

24 Q And there would be personnel records of who was in
25 the building that day, correct?

1 A Yes.

2 Q And so we could go talk to those folks to see what
3 was going on and how they found those 40 cartridges, right?

4 A Yes.

5 Q You haven't done that, correct?

6 A No.

7 Q The Department hasn't done that, correct?

8 A Not to my knowledge.

9 Q All right. I think you -- do you still have the
10 Petitioner's exhibits? I think you do. Can you turn to
11 P 7?

12 A Is it the Arvida Labs?

13 Q Yes. Who is Arvida Labs?

14 A They're a provider of hemp oils and extracts.

15 Q Where are they located?

16 A I believe Florida, yeah, Ft. Lauderdale.

17 Q And what did you use Arvida Labs products in?

18 A In Conte products.

19 Q In Conte products. So these are purchase orders
20 for THC-A; is that correct?

21 A Yes.

22 Q Is TCA a tetrahydrocannabinol?

23 A No.

24 Q It's not?

25 A It's -- I don't know the -- I couldn't say the

1 entire full name, but it's a different molecule than THC.

2 Q It is currently prohibited under the Department's
3 rules, correct?

4 A Yes, after July 31st. It is now prohibited.

5 Q As a tetrahydrocannabinol?

6 A It specifically lists THC-A.

7 Q Okay. Go to P 19. I think you said this shows --
8 what is P 19, again?

9 A This is a certificate of analysis.

10 Q For what?

11 A For THC-A. It says up at the very top, on the
12 left.

13 Q I see. So I see a large box in the middle of the
14 page. It says 87.183 percent total THC, correct?

15 A Correct.

16 Q And so isn't this test stating that the product is
17 87.183 percent total THC?

18 A The total THC equation is something that comes
19 with all COAs. That multiplies the THC-A by .87 percent
20 because that 13 percent is what's lost when you're
21 converting THC-A to THC. So that's the equation for the
22 total amount of potential THC in it. But as you can see,
23 the Delta-9 THC is .269 milligrams per gram. And the
24 THC-A -- or, yeah, 2.64 milligrams per gram, and the THC-A
25 is 991.10 milligrams per gram.

1 Q So the product that was tested that this test
2 results -- or corresponds to, what was the product?

3 A THC-A.

4 Q No. I'm sorry. What product in the Delta
5 Extraction's profile does this test relate to?

6 A Oh, this was the ingredient made to use the
7 distillate.

8 Q Sure. And so how does the substance tested in
9 Exhibit P 19 correlate to any product that Delta Extraction
10 used -- or created?

11 A This was added to the crude distillate that was
12 run through our machines with Missouri flower and then
13 decarboxylated and made into distillate, which then got put
14 into Conte carts.

15 Q And so which Metrc tag does that correlate to?

16 A I would have to look it up on Metrc. There's a
17 lot of tags. I can't remember them all, off the top of my
18 head.

19 Q So all of these test results -- I don't want to go
20 through them all. We only have another hour or so.

21 All of these test results, could you tell us where
22 the products tested ultimately ended up in the products
23 that you created?

24 A Yes. So that, Metrc, you're able to do that by
25 tracking when stuff was created, the source packages from

1 it, what flower it was made from. And then when we had
2 distillate and added weight to it through THC-A, which we
3 listed out, you can then see what products that was made
4 into.

5 Q Sure. You can't tell us today, though?

6 A Not off the top of my head. It's, there's -- very
7 long numbers, and there's a lot of them, and we've made
8 thousands and thousands of products.

9 Q On P 22, I think you said this was a potency test;
10 is that right?

11 A This was -- yes. We hadn't looked at it, but this
12 is just a potency test, yes.

13 Q What is a potency test?

14 A That tells you the cannabinoid profile of a
15 product. So how much THC is in it, how much CBD is in it.

16 Q And that ultimately is to inform the consumer of
17 how profound the intoxication could be; is that correct?

18 A Yes.

19 Q And so these testing results inform later branding
20 and packaging requirements?

21 A Well, no. This is an R&D test. So this doesn't
22 have anything to do with the branding or packaging
23 requirements.

24 Q How do you use the results of this test, then,
25 when you make your final product?

1 A Well, as you can see from the sample name, this is
2 BW-6/3 tails (distillate). So this is actually some crude
3 material that came out of our machine, and we were testing
4 to see how efficient we were at actually extracting
5 material. So this number should be 0 percent THC, and this
6 is just the waste material that's coming out. And we
7 actually learned that we weren't totally efficient with
8 running our machine and there was still THC left in that
9 leftover material.

10 Q So P 22 is intended to demonstrate the lack of
11 THC; is that correct?

12 A Yes. This is supposed to inform our own process
13 for distillation in how efficiently we're doing it and how
14 well we're doing it and if we're getting every ounce of THC
15 we can out of the flower. So we're doing this to ensure
16 our processes are working. And for the specific test,
17 0 percent would have been better than what it is.

18 Q Are cannabinoids intoxicants?

19 A Some are.

20 Q Some are?

21 A Not all of them.

22 Q Is THC-A a cannabinoid?

23 A Yes.

24 Q And THC-A when heated becomes THC, correct?

25 A Correct.

1 Q Conte has been a part of Delta Extraction's
2 business since the beginning of its operations; is that
3 correct?

4 A Yes.

5 Q You said earlier on direct that you no longer have
6 a relationship with Conte; is that right?

7 A That's correct.

8 Q Why is that?

9 A Well, the rules changed to ban THC-A; so that
10 whole process, we have no plans of ever doing again. And
11 so --

12 Q You still have a large volume of Conte inventory
13 at your site, don't you?

14 A Yes.

15 Q And so why is it that you still had the Conte
16 distillate at Delta Extraction's facility on August 2nd,
17 when you no longer intend to use it?

18 A Well, I haven't spoken with them since the --
19 since all of this went down. So that's still a huge
20 unknown about what's going to happen with all the product
21 in our facility; Conte, Midwest Magic. You know, we've
22 kind of been dealing with what's in front of us. I don't
23 know what's going to happen with all the product.

24 Q The license is -- I think it's referred to as
25 MAN 22, correct?

1 A Yes.

2 Q So is it your understanding that all the
3 manufacturing licenses are numerically numbered? Correct?

4 A Correct.

5 Q And you all must have ranked highly, because you
6 ranked 22?

7 A I don't know if that's how it worked, but sure.

8 Q In any event, MAN 22 is commonly a -- is the
9 license number that Delta Extractions operates under?

10 A Correct.

11 Q Conte doesn't have a manufacturing license; is
12 that correct?

13 A Correct.

14 Q Man 22 is responsible for the production of all
15 marijuana products within its walls, correct?

16 A I believe so.

17 Q You said you worked five days a week; is that
18 correct?

19 A Correct.

20 Q The facility operates seven days a week, does it
21 not?

22 A Correct.

23 Q Who works in the facility on Saturday and Sunday?

24 A We have -- Conte will come up and do certain
25 things then. They have people who have their agent IDs,

1 who are in our Metrc system, who will oversee those
2 processes. But I'm not there every single day. I also
3 have another life.

4 Q You don't oversee the production of Conte products
5 on Saturday and Sunday, correct?

6 A Correct. I guess it's under my responsibility,
7 but I'm not physically there.

8 Q Do you watch the security feeds of what they're
9 doing while they're there?

10 A No.

11 Q Does Delta Extraction have anybody else on the
12 ground who is monitoring Conte's activities on Saturdays
13 and Sundays?

14 A Yes. There are representatives of Delta
15 Extraction there who are in our Metrc and have their agent
16 ID numbers.

17 Q So to get an agent ID number, you have to be
18 affiliated with Delta Extraction, correct?

19 A To get an agent ID number generally, you have to
20 go through an approval process with the State, and you have
21 to be attached to a licensed facility.

22 Q Right. So does Delta Extraction have a contract
23 with Conte?

24 A Yes.

25 Q And does that contract state that Conte will be

1 able to access the building on the weekend to manufacture
2 their products?

3 A I'd have to go back and read it, but it's
4 certainly not allowed in the rules, to not have anyone with
5 an agent ID in the building. So someone with an agent ID
6 is there at all times.

7 Q Can you testify today what Conte is doing when
8 you're not there?

9 A They're making products.

10 Q Do you know --

11 A Packaging products. Sorry.

12 Q I don't mean to interrupt. I apologize.

13 Have you ever inspected there the products they're
14 making?

15 A Yes.

16 Q When was that?

17 A During some of these recounts or audits, you
18 mentioned that we do monthly audits. We go through, and
19 there's no way to physically look to see if there are, say,
20 mycotoxins or heavy metals or anything. But I look at all
21 the certificates of analysis and I help out with some of
22 those inventory audits.

23 Q How many employees does Delta Extraction have?

24 A 18, total, on the payroll.

25 Q How many people have an agent ID through Delta

1 Extraction?

2 A That would be, I believe, 18. I don't think --
3 Rachael, obviously, has an agent ID, but --

4 Q So, when you say Delta Extraction has
5 18 employees, you're counting the individuals who have an
6 agent ID through Conte?

7 A Yes. So I'd actually have to look on Metrc,
8 because Conte is not on our payroll. We reimburse them for
9 certain labor stuff.

10 Q So you have individuals with agent IDs through
11 Delta Extraction that are on the Conte payroll?

12 A And we pay for that labor, but retroactively,
13 because we do a profit split at the end, after their
14 products are sold. So then they'll charge us back for
15 labor.

16 Q I assume you have records of all of those
17 reimbursements?

18 A I believe so.

19 Q Did you notify Conte that they could not access
20 the building after the August 2nd, 2023, order of immediate
21 suspension?

22 A They were notified of the suspension, I believe.
23 And in that suspension it's definitely apparent that no one
24 can access without approval from the State.

25 Q Do you know if anyone from Conte accessed the

1 building on the weekend after receiving the suspension
2 notice?

3 A I don't think anyone accessed the building on the
4 weekend after the suspension notice.

5 Q Do you know if anyone from Conte has accessed the
6 building at any time since the suspension notice?

7 A I can't confirm. I don't have the facts in front
8 of me.

9 Q The building still has power, correct?

10 A Yes, correct.

11 Q You have had individuals inside the building since
12 August 2nd, correct?

13 A With state representatives with them, yes.

14 Q And with law enforcement, correct?

15 A Yes.

16 Q Your security system detected activity at the
17 exterior window in the office the morning of August 7th; is
18 that correct?

19 A Correct.

20 Q That was about four o'clock in the morning?

21 A (The witness nodded his head.)

22 MR. HATFIELD: Commissioner, I just -- I know that
23 the Administrative Hearing Commission uses fairly generous
24 evidentiary rules; but anything that happened after the
25 suspension order is not relevant to these proceedings. And

1 I object to any testimony about anything that happened
2 after the suspension order.

3 COMMISSIONER ILES: Would you like to explain the
4 relevance?

5 MR. DOUGLASS: Yes. Well, first of all, we've
6 heard -- beginning with opening, we heard about all of the
7 events that have happened since the suspension notice.
8 Insofar -- in opening we -- you heard all about the
9 meetings that we had after with Counsel and members of --
10 from Delta Extraction.

11 You've heard cross-examination of Ms. Kirkweg
12 about what have they done or not done since the notice of
13 imminent -- or immediate suspension was issued. Insofar as
14 there's a relevance concern, I think the door has been
15 opened to what the parties have done.

16 Moreover, I think it goes into the second, third,
17 and fourth prongs of the test the Commission will employ in
18 this case to determine the appropriateness of a stay,
19 including the threat to public safety that is posed by the
20 ongoing operation, the irreparable harm that is claimed,
21 and the other prongs.

22 COMMISSIONER ILES: Okay. It's my understanding
23 what we're dealing with here is an ongoing investigation,
24 that what you -- what the State has alleged originally is a
25 threat of imminent harm, but you're still fleshing out what

1 that harm might be. And so, to me, I am interested to know
2 every -- any fact that might help me understand what that
3 is, for the purposes of this stay. So I am going to
4 overrule the objection.

5 I realize, also, I have failed to make an actual
6 ruling on all the other objections. This time I'm going to
7 do it and overrule it.

8 So, you can proceed.

9 MR. DOUGLASS: Thank you, Commissioner.

10 BY MR. DOUGLASS:

11 Q I think we covered the ground. There was a
12 security alert on August 7th, around 4 a.m., correct?

13 A Correct.

14 Q In fact, there was an issue with the security
15 cameras around August 2nd as well; isn't that correct?

16 A Correct. We had lost power the morning that the
17 State came to visit us and suspend us.

18 Q And so you had to call a tech out on the 2nd, who
19 made some repairs and got the cameras up and going?

20 A Correct, yes, with state officials in the
21 building, and me.

22 Q Right. And then the state agents came back on
23 August 4th; is that correct?

24 A Correct. I think that was a Friday.

25 Q And why were they there on August 4th?

1 MR. HATFIELD: Calls for speculation. He doesn't
2 know why they were there.

3 COMMISSIONER ILES: Are you able to answer?

4 THE WITNESS: Yes. We -- they wanted us to hand
5 them over security footage. We couldn't upload it directly
6 to the cloud because we have satellite internet. The lab
7 is in a remote location. So we had to physically download
8 it onto a hard drive.

9 COMMISSIONER ILES: So I just really meant to
10 establish whether he was able to answer. He has gone ahead
11 and answered. So I'm obviously overruling the objection.

12 MR. HATFIELD: Right, yeah. Told you what they
13 told them, which may or may not be why they were there.
14 But I appreciate it. Thank you.

15 COMMISSIONER ILES: Did you want to object to that
16 as well?

17 MR. HATFIELD: No, no, no, no. We're good.

18 BY MR. DOUGLASS:

19 Q Mr. Maritz, the State returned on August 4th to
20 try to obtain access to the security footage, correct?

21 A Yeah. It was because it's -- there's so much
22 data, we met with the security company out there to figure
23 out a way that we could hand that over.

24 Q And then they were scheduled to come back on
25 August 7th and get that data; is that correct?

1 A Yeah. So we -- on August 4th we went and had to
2 buy a bunch of hard drives. We plugged them in and got it
3 all set up and attempted to start to downloading it. It
4 was over a million pages of data; and so it couldn't
5 actually collect it to be able to start the download.

6 So if -- you know, it probably was only going to
7 take like an hour. But, by the time we got it all set up,
8 it was three o'clock in the afternoon and the state
9 officials had plans on Friday; and so they said that we'd
10 have to restart Monday. If I could have stayed in that
11 building, I would have gotten it all downloaded. Or come
12 back Saturday. We would have been able to start the
13 download.

14 Q Sure. Everybody agreed that they'd come back on
15 Monday and finish this transfer of security footage,
16 correct?

17 A Correct.

18 Q And did the State also want the access logs that
19 were maintained on that computer system?

20 A Yes, and they received those.

21 Q Okay. And then the morning of August 7th, there
22 was a security alarm. Did you all call anyone as a result
23 of the security alarm at 4 a.m.?

24 A There was also storms in the area, and our power
25 was out and our internet was out. And so we were calling

1 internet providers, we were calling the power company. We
2 just assumed that the power had gone out, that the security
3 system wasn't working. And we actually hadn't seen the
4 notice of the burglar alarm yet. We just noticed that we
5 couldn't check the -- the internet was out and the power
6 was out, and so --

7 Q You did get a remote alert that there was activity
8 at the window and in the office, correct?

9 A When we checked on the security app later in the
10 day.

11 Q Did you call the police when you discovered that
12 on the security app?

13 A No, because, normally, we'd be able to log into
14 the security cameras and see what was actually happening.
15 But we had assumed that -- a storm had just blown through;
16 and oftentimes, we'll get that same security warning from
17 our garage doors or anything that has a sensor that's close
18 to the outside when wind blows in, or a stick can get
19 lodged in there and throw stuff off. So we've had a ton of
20 false alarms like that throughout our entire history of
21 that building.

22 Q Including from the interior of the building?

23 A Well, this was the -- this was just the window,
24 which faces the exterior.

25 Q You got an alarm in the office, too, didn't you?

1 A Well, the window is for the office; and so the
2 alarm was for the actual sensors on the window that are
3 supposed to connect and stay together. It's the same with
4 the garage doors. The sensors are actually on the inside,
5 but the wind can blow through, something can hit the garage
6 doors and the sensors are just slightly off.

7 Q Who discovered the broken window to the office?

8 A I believe it was one of our employees, Mark Dahl.

9 Q And what does Mark Dahl do?

10 A He's the head of our facilities. He does a lot of
11 extraction processes, too, on the Midwest Magic side. He
12 also works at the farm. We're located on a 1,800-acre
13 property that's a working farm. And so we were shut down.
14 So he works on it sometimes. And he was down in a field a
15 couple hundred yards away from the lab and noticed that the
16 window was broken.

17 Q And what time of the day was that?

18 A It was probably around -- I can't remember --
19 seven or eight o'clock at night, maybe.

20 Q So the window was open all day on the 7th,
21 correct?

22 A I guess so, yeah. I can't confirm.

23 Q The State was supposed to be there on August 7th,
24 correct?

25 A I believe so.

1 Q And why was that on-site rescheduled?

2 A I can't exactly remember. I think we needed the
3 security person to actually come and help out with the
4 transferring of data and they couldn't make it on Monday.

5 Q I'm sorry. I thought you said that you were all
6 ready to start the transfer on Friday evening or Friday
7 afternoon?

8 A Yeah, but they were going to try another method
9 because we had trouble loading the actual document to start
10 the download. We couldn't actually start the download. So
11 it's possible that we could have started it an hour later
12 or four hours later or not at all.

13 Q Was anyone with Mr. Dahl when he observed the
14 window was broken?

15 A I don't think so, but I'm not sure. I can't
16 confirm.

17 Q Have you spoken with Mr. Dahl, personally, about
18 what he observed?

19 A Yes.

20 Q And who -- you ultimately called the
21 Franklin County Sheriff's Office, correct?

22 A Correct.

23 Q Did you make that call or did somebody else with
24 Delta do that?

25 A I did not. My phone was dead. We were -- me and

1 my brother were up in Wisconsin for a Maritz board meeting.

2 Q And so do you know who did contact the
3 Franklin County Sheriff's Office?

4 A No.

5 Q Do you have any idea why Mr. Dahl told the
6 Sheriff's Office that he observed the window was broken
7 around 2:30 in the afternoon?

8 A No.

9 Q Have you obtained a copy of the police report?

10 A No, I haven't.

11 Q Is Delta Extraction doing its own investigation as
12 to what happened the morning of August 7th?

13 A I believe we're letting the police handle it, but
14 we're certainly interested in the results.

15 Q It's my understanding nothing other than the
16 security -- I'm sorry -- the computer system was taken the
17 morning of August 7th; is that correct?

18 A Yeah. I believe it's an ongoing investigation.
19 And we haven't -- so I look forward to the results. But I
20 don't have any facts in front of me.

21 Q Well, we do know that the security footage
22 hardware is gone, correct?

23 A Correct.

24 Q We also know that the access log hard drive is
25 gone, correct?

1 A Yeah. That's all tied into the security access
2 system.

3 Q Right. So there's a server that has all of this
4 computer-based stuff on it, including access logs, security
5 footage. And that server is now gone, correct?

6 A Correct.

7 Q I have seen some correspondence from Delta
8 Extraction, indicating that they consider this a felony
9 white collar crime, right?

10 A (The witness nodded his head.)

11 Q Does Delta Extraction suspect that someone from
12 inside, someone who was affiliated with Delta Extraction,
13 broke into the building and stole the server?

14 A I really -- I don't have the facts in front of me.
15 I don't want to make accusations, and I'm not comfortable
16 accusing parties of doing anything like that 'cause it's an
17 ongoing investigation.

18 Q Who knew that the State was supposed to come back
19 on August 7th and get the video footage?

20 A They would have been corresponding with Rachael
21 and our security director.

22 Q Would any of the other employees know that the
23 State was coming back on August 7th to pick up this video
24 footage?

25 A I don't believe so, no.

1 Q Do you know?

2 A I can't confirm if someone else like said
3 something. I don't have the facts in front of me.

4 Q Did Mr. Dahl know that the State was coming back
5 on August 7th?

6 A I don't believe so, no.

7 Q So, clearly, Delta Extraction doesn't know who it
8 was that took the servers, correct?

9 A Correct, yeah. It's an ongoing investigation.

10 Q And Delta Extraction hasn't reported, to the State
11 at least, that additional marijuana or marijuana products
12 were taken when the servers were taken, correct?

13 A Correct. And we're not obviously allowed in our
14 building without the State present with us; so we can't,
15 you know, go in and count stuff.

16 Q You have been in the building since the servers
17 were taken, correct?

18 A I have not, no.

19 Q Delta Extraction has been in the building since
20 the servers were taken, correct?

21 A With the State and the police.

22 Q Right. And Mr. Dahl did a preliminary analysis of
23 what was taken on the night when he went in there with the
24 Sheriff's Office, correct?

25 A Yeah. I don't know exactly how it transpired; but

1 I think that the police, you know, took down notes and
2 pictures and data, and they're doing an investigation.

3 Q To your knowledge has Delta Extraction reported to
4 the police or DHSS that marijuana or marijuana products
5 were taken at the same time the servers were taken?

6 A I wouldn't be the one communicating with the State
7 or the police about it.

8 Q Do you know what was on the security footage that
9 was taken on August 7th?

10 A It would have been the last 60 days 'cause that's
11 what we're required to keep.

12 Q And by that it would be the video feeds that cover
13 the entire indoor -- the inside of the facility, correct?

14 A Yes. The inside and outside.

15 Q And outside. And it would show everything that
16 had happened on a 24-hour cycle at the facility site,
17 correct?

18 A Correct.

19 Q For 60 days?

20 A Correct.

21 Q You don't know what was on that security footage,
22 other than the fact that that footage existed, correct?

23 A Correct.

24 Q And you don't know who committed this theft,
25 correct?

1 A Correct.

2 Q You have contracts with other cultivators and
3 manufacturers to purchase the products that you then
4 manufacture. Is that true?

5 A I don't think that we have necessarily -- we don't
6 have contracts with every single group we do business with.
7 There's a marketplace called LeafLink that you can put your
8 products on and people can buy them, but you don't have to
9 sign a piece of paper in order to do business with people.

10 Q Right. So, if you need a thousand grams of
11 distillate, you just go out there, you make a purchase
12 order, and you buy it, and they ship it to you, correct?

13 A Correct. Most of it is through relationships or
14 just people, you know --

15 Q So --

16 A -- calling or texting.

17 Q Right. So Heya was mentioned earlier. Heya, if
18 they're cultivating flower and you need flower, you just
19 call them up and say, hey, can we buy a hundred pounds of
20 flower, correct?

21 A Correct.

22 Q And so those are not contract-driven purchases,
23 correct?

24 A Correct.

25 Q And so you're not under any obligation to buy

1 100 pounds of flower from Heya every month for the next
2 year, correct?

3 A That's correct.

4 Q Do you have contracts with dispensaries to
5 purchase your products?

6 A Not to my knowledge.

7 Q So, when they want to buy your products, they just
8 call you and say, hey, ship me a hundred packages of
9 gummies?

10 A Correct.

11 Q Something along those lines?

12 A Uh-huh, yes.

13 MR. DOUGLASS: One second, Commissioner. I think
14 I might be wrapping up here.

15 Oh, yeah. Quick follow-up.

16 BY MR. DOUGLASS:

17 Q If you could turn to P 8. These were the Conte
18 SOPs that you referenced earlier, correct?

19 A Correct.

20 Q You didn't write these SOPs, right?

21 A Correct.

22 Q I think you said that you -- did you say you use
23 these SOPs, or is that what Conte does on the weekends?

24 A This is what Conte does on the weekends.

25 Q Okay. So insofar as these SOPs are used at the

1 Delta Extraction facility, they're done by the Conte -- I
2 think you called them subcontractors, on the Saturday and
3 Sunday when you're not in the building, correct?

4 A Correct.

5 Q SOPs, I think you used the word "approved" a
6 couple of times earlier. Do you remember saying approved
7 SOPs?

8 A Yes. That's how I think of them. I know that the
9 State's position is that they don't approve SOPs. But they
10 will ask us to make changes to them before adding them to
11 the file. So they can deny SOPs, but they don't approve
12 them (indicating quotes).

13 Q Right. They don't tell you: this is how you
14 manufacture marijuana products, correct?

15 A Yes. But they can say how not to.

16 Q Sure, right. If there's a problem in a
17 manufacturing process that injects pollutants, for
18 instance, they would not sign off an SOP, correct?

19 A Correct.

20 Q So have you ever had an SOP denied by the State?

21 A We've been asked to make changes. That hemp SOP
22 is one example.

23 Q Sure. What about your other SOPs? Did you get
24 some sort of letter from the Department that said we
25 approve of this process?

1 A We did not get a letter, no. We did get an email
2 saying that it was added to the file.

3 Q Right. You looked at that spreadsheet on the iPad
4 there, that Excel spreadsheet. I think that was P 29. Do
5 you remember that?

6 A Yes.

7 Q It showed, I think, some testing failures of Metrc
8 tags, true?

9 A True.

10 Q All right. And then, so, next to the tag is a
11 long string of other numbers. Are those other source
12 materials?

13 A Yes. So the source package on Metrc is attached
14 to every package. And those are the individual plants that
15 that package was eventually made from. So, if you have an
16 oil or a distillate, it's the plants that are used in
17 that -- used to make that product.

18 Q Right. And you would agree that insofar as you
19 injected a CBD-based distillate into that final product, it
20 wouldn't show up in that product string?

21 A No, and neither would the terpenes, neither would
22 the hardware, which is where heavy metal failures can come
23 from, or the cleaning materials in your lab.

24 Q Right. But none of those would actually result in
25 THC ultimately being added to the product, like THC-A is,

1 correct?

2 A Correct.

3 MR. DOUGLASS: One second.

4 That's all I have, Commissioner. Thank you.

5 COMMISSIONER ILES: Okay. Are you going to have
6 redirect?

7 MR. HATFIELD: A little bit.

8 COMMISSIONER ILES: Okay. So I see it's 12:30;
9 but do you want to go ahead and do the redirect now, and
10 then maybe we can talk about how much longer we need to go
11 and if we need to take a long break?

12 MR. HATFIELD: That's my preference, Commissioner.

13 COMMISSIONER ILES: Okay. So please proceed.

14 MR. HATFIELD: All right.

15 REDIRECT EXAMINATION BY MR. HATFIELD:

16 Q So, Mr. Maritz, let's start with the break-in.
17 How about that? So let's make sure the Commissioner
18 understands. The facility that you work at, give her a
19 little understanding of: Is this out in the middle of
20 nowhere? Are there people around? Is it in a city? Just
21 describe the setting.

22 A Yeah. It's on an 1,800-acre property, out in
23 Franklin County, Missouri, kind of by the Meramec, on a --
24 off of a farm, dirt road. So it's tucked way back in
25 there. And there's really no other commercial properties

1 around it.

2 Q Remote; fair description?

3 A Yes.

4 Q All right. So, on August 2nd, the State sent an
5 order of suspension, which is all over the record. And the
6 State told you that you should not allow any personnel,
7 including owners or security guards, to enter the facility
8 on August 2nd, right?

9 A Yes.

10 Q And did you comply with that?

11 A Yes.

12 Q Told everybody to get out of here?

13 A Yes.

14 Q Including the security guards, right?

15 A Correct.

16 Q Because the State told you to?

17 A Correct.

18 Q Otherwise, you would have had security guards
19 there, right?

20 A Yeah. We would have had people around and
21 security, yeah, around.

22 Q All right. So, from August 2nd -- Well, let's
23 back up. How many -- if I went in there, if I went out
24 there on a normal Thursday afternoon, how many cars are
25 there going to be?

1 A Oh, I mean, 12 or 14 or so. Some people carpool
2 and -- yeah.

3 Q But there are like trucks coming and going?

4 A Yes. We have deliveries, we have a loading dock
5 with trucks, come in and out.

6 Q And so those trucks have to go from your facility,
7 drive down the road past other houses as they leave?

8 A Yeah. I mean, they have to come in from the
9 street and then go down a dirt road through the property to
10 get to our facility.

11 Q Trucks going in and out, what? I know the answer
12 to this question. Every day?

13 A Yeah. A couple a week, probably. I mean, with
14 like UPS and Amazon and stuff, maybe every day.

15 Q So, starting on August 2nd, do you recall what
16 time everybody got sent home on August 2nd?

17 A It was about 10 or 10:30 a.m.

18 Q 10:30 a.m. All the cars are gone, right?

19 A Uh-huh.

20 Q All the security is gone, right?

21 A Yes.

22 Q All the trucks are gone; nobody is coming in and
23 out, correct?

24 A Yeah.

25 Q And it was that way the rest of the day, the 2nd?

1 A Correct.

2 Q That day all day, the 3rd?

3 A Correct.

4 Q That day all day, the 4th?

5 A Correct.

6 Q That day all day, the 5th?

7 A Correct.

8 Q And we're into the weekend now, the 6th -- 5th and

9 6th, the weekend?

10 A Correct.

11 Q Nobody is coming in?

12 A Correct. Oh, well, sorry. You got on a roll

13 there. But we did come back on Friday to secure the

14 security footage.

15 Q Yeah, yeah, yeah, yeah. I was actually going to

16 ask that.

17 A Yeah. Sorry about that.

18 Q Nobody is a bit of an overstatement. But the

19 activity that an outside observer -- say, somebody who

20 lives up on the highway, an outside observer would be able

21 to determine that there is significantly less activity at

22 that facility than there usually is?

23 A Correct.

24 Q Yeah. And so, apparently, you don't know; but

25 somebody broke the window, right?

1 A Correct.

2 Q And explain to the Commissioner: when you break
3 that window, if you went through the window, where would
4 you find yourself when you go through the window?

5 A You're in the office and you're facing the
6 security equipment.

7 Q All right.

8 A Server.

9 Q And is there anything else in that office?

10 A There's --

11 Q In that room, I should say.

12 A There's computers and a fridge and like a sign-in
13 book. So mostly administrative stuff.

14 Q All right. And is there a door that would take
15 you to the rest of the facility?

16 A Yes.

17 Q And is that door locked?

18 A That door --

19 Q You need a card to get through it, right?

20 A With that specific door, that's the only one in
21 the whole facility that you don't.

22 Q Okay, all right. So somebody took the servers
23 there, apparently; they're not there anymore?

24 A Yeah, correct.

25 Q And you all called the police at some point?

1 A Correct.

2 Q Had the State allowed you to, you intended to give
3 them the footage on Friday?

4 A Correct.

5 Q So let's back up again. I got to go back through
6 my timeline.

7 So the State was in the facility on August 2nd,
8 told everybody to go home; is that right?

9 A Correct.

10 Q Did they ask for security footage?

11 A They did, but it's millions of pages of data.

12 Q Okay.

13 A And so they asked if we could upload it to the
14 cloud, and our security guy said it would take over a year
15 to upload all of that through the wifi. We checked the
16 speeds and stuff of uploads.

17 Q All right. Let's just make sure we understand the
18 security footage too. The State can access those cameras,
19 correct?

20 A Yes.

21 Q They could make their own recordings --

22 A Correct.

23 Q -- if they wanted to?

24 They can also observe what's going on there,
25 correct?

1 A Yes.

2 Q All right. And in terms of -- there was some
3 discussion about what happened. Storms, an alarm goes off
4 and all that. Under the State's order, you couldn't have
5 gone into the facility if you wanted to, right?

6 A Correct.

7 Q So the implication is that you guys stole the
8 tapes so the State couldn't have them. As the director of
9 that facility, would you rather we have those tapes?

10 A Much rather, yeah.

11 Q Why is that?

12 A Because we -- we wouldn't really -- I guess we'd
13 still be here because we got suspended; but we'd be able to
14 prove everything that we said. And, really, in my mind,
15 because we sold so many products with THC-A, we're here for
16 pretty minor infractions. And then, with the security
17 footage being stolen, it all looks so much worse. So,
18 without that factor, I feel like it would be a pretty
19 simple case.

20 Q All right. So I guess what I'm going to ask you
21 is just a matter of dates, but I want to be real clear on
22 something. If the Franklin County Police Department finds
23 those servers tomorrow and all of that footage is still
24 there, there's only going to be 60 days' worth; is that
25 correct?

1 A Yes. That's the amount that we were required to
2 save.

3 Q Okay. So, from the incidents that are in
4 Ms. Kirkweg's affidavit, there would only be security
5 footage for one of them, right?

6 A I'd have to check the dates, but I think so.

7 Q Whatever it is?

8 A Yeah.

9 Q All right, all right. So you had a couple of
10 questions. These are kind of -- we're in the lightning
11 round now. You were asked a little bit about
12 Petitioner's 22, which was the one that tested to try to
13 see whether any THC was left?

14 A Correct.

15 Q And I just wanted to make sure. I think we all
16 got it, but I want to be clear for the record. I think
17 what you're saying is: You ran that test to make sure you
18 weren't leaving valuable product in the waste basket?

19 A Correct.

20 Q That was so you guys could, well, make more money?

21 A Correct.

22 Q It didn't have anything to do with patient safety?

23 A Correct.

24 Q Yeah. Exhibit 25 and 26, we might need to look at
25 these. Well, these are certificates of analysis on

1 product. And I don't remember what I was going to ask, so
2 never mind.

3 Okay. So you had some questions about the Conte
4 personnel who were in the building and -- well, why was it
5 the weekends?

6 A Because Conte also operates in another state
7 during the weeks, and then they bring people from their
8 team up on the weekends because they're doing things during
9 the week.

10 Q And I think I understood it. But all of the
11 personnel that are in the facility have IDs?

12 A Yes.

13 Q So all of these Conte folks that come in have
14 agent IDs?

15 A Yes. And sometimes they'll use contractors.
16 We're allowed to use contractors for a certain amount of
17 time, as long as they sign in, go through all the
18 appropriate processes and stuff.

19 Q And, by appropriate processes and stuff, we mean
20 that the State is aware that there are Conte people in the
21 facility, right?

22 A Yes.

23 Q They've been aware of that since you started
24 operating?

25 A Yes.

1 Q All right. So, way back at the beginning, one of
2 the first things that you were asked about on
3 cross-examination was with reference to Exhibit 25, I
4 think. Well, there was some line of questioning about
5 converting CBD oil into THC. Do I have -- does that make
6 sense?

7 A Yes.

8 Q Okay. I get hung up on THC, THC-A, CBD.

9 A Yes.

10 Q But that makes sense, right?

11 A Yes. That was the first process --

12 Q All right.

13 A -- with Conte.

14 Q So when the CBD arrived at your facility, it was
15 less than .3 percent THC?

16 A Correct.

17 Q It was hemp-derived?

18 A Correct.

19 Q But, after it was in your licensed facility, that
20 CBD was converted, through some process, to THC?

21 A Yes.

22 Q Okay. And then after you and your licensed
23 facility converted it to THC, it -- some of it might have
24 gone to other manufacturers --

25 A Yes.

1 Q -- through processes? Who would have tested it --
2 A Yes.
3 Q -- before it could be distributed to customers?
4 A Yes. Everything needs to be tested before it gets
5 to customers.
6 Q And, similarly, if any of that product we were
7 just talking about went into your own packaged materials,
8 which I know it probably didn't, but it would also have to
9 be tested?
10 A Correct, yep.
11 Q And when we were talking about Exhibit 25 -- well,
12 okay. Well, let me ask you this. So you had a lot of
13 questions about, kind of, your personal knowledge. And one
14 of the first ones had to do with one of the incidents in
15 Ms. Kirkweg's affidavit, which was Batch 1. And you talked
16 about, I think, CBD oil with respect to Batch 1. Do you
17 remember Batch 1?
18 A Not really. A little bit.
19 Q Well, I guess, as the manager, do you generally
20 know what you were doing in that very first set of
21 products?
22 A Yeah, yes. And, like, what we were doing in the
23 lab was intermittent at that point, too. We didn't have
24 enough things to do all day, every day. But, yes, I was --
25 I would have been there and aware of everything that was

1 happeni ng.

2 MR. HATFIELD: That's all I have, Commi ssi oner.

3 COMMI SSIONER ILES: Okay. Did you have any
4 recross?

5 MR. DOUGLASS: Just five minutes, tops.

6 COMMI SSIONER ILES: Five minutes more wi th him?

7 MR. DOUGLASS: Yes.

8 COMMI SSIONER ILES: Okay.

9 MR. DOUGLASS: Just as a follow-up.

10 RECROSS-EXAMI NATION BY MR. DOUGLASS:

11 Q I just wanted to make sure I understood, because
12 there was a suggesti on that the State was responsi ble for
13 people not being there at four o'clock in the morning on
14 Monday, August 7th. Do you normally have people at the
15 building at four o'clock in the morning on Monday mornings?

16 A No. People would normally get in around 8 a.m.

17 Q So the faci lity would be empty at 4 a.m. on any
18 morning, correct?

19 A Yes, most of the time.

20 Q After the faci lity was suspended on August 2nd,
21 did you make a request to allow securi ty to be in the
22 building to maintain the securi ty?

23 A It would have been Rachael that was correspondi ng
24 wi th the State. I don't know what requests were made.

25 Q It was my understanding -- and correct me, please,

1 if -- it was my understanding that your servers captured
2 84 days of certain video footage, retroactive?

3 A So there's 30 cameras on the servers. The ones
4 that had no activity on them captured 84 days. But the
5 ones that had a lot of activity on them captured only
6 60 days because it takes more terabytes of data to capture
7 the activity. And then it categorizes that so you can go
8 back and look at the activity.

9 And so it was a range of 84 to 60. But I say 60
10 because that's -- if you looked at any single camera,
11 it's -- would definitely go back to 60. Some would go back
12 to 84. But most would go back to 60.

13 Q The access log shows whose ID was used to open a
14 door, correct?

15 A Correct.

16 Q You said Conte has IDs and your staff have IDs,
17 correct?

18 A Correct. It uses their Metrc number.

19 Q Their Metrc number?

20 A Yeah.

21 Q And then the video shows who actually walks
22 through the door, correct?

23 A Correct.

24 Q And so a single card could allow five people,
25 ten people into the building, correct?

1 A A card will open the door.

2 Q And as many people -- if the door is open, people
3 could just walk in, correct?

4 A Yeah. It's -- I mean it's a pretty secluded area,
5 so it wouldn't just be random people off the street; but
6 yes.

7 Q And then the video shows what occurs once people
8 enter the building, correct?

9 A Correct.

10 Q And what they were doing?

11 A Correct.

12 Q You said there at the end that you don't remember
13 all the details about the first batch, correct?

14 A Not every single detail of everything that
15 happened two years ago.

16 Q Sure. Probably two weeks ago it's hard to
17 remember every single batch, correct?

18 A Yeah. I forgot what I had for breakfast already.

19 Q And so that's what Metrc is for, correct? It
20 keeps records of all of the activities of THC-based
21 marijuana products in the facility?

22 A Correct.

23 MR. DOUGLASS: All right. I have nothing further.

24 COMMISSIONER ILES: Mr. Hatfield, anything else?

25 MR. HATFIELD: No. Thank you, Commissioner.

1 COMMISSIONER ILES: Okay. I think what we'll do
2 now is go off the record. If we could have a little
3 discussion about how much longer this hearing is going to
4 continue and when we want to do that. Is that okay with
5 everybody?

6 MR. HATFIELD: Yes.

7 MR. DOUGLASS: Yes.

8 COMMISSIONER ILES: Okay. We're going to go off
9 the record now.

10 (The noon recess was taken.)

11 (This concludes Volume I of the transcript.)

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1 C E R T I F I C A T E
2 STATE OF MISSOURI }
3 COUNTY OF COLE } ss
4 I, Ginger R. Sommerer, CCR, Registered
5 Professional Reporter, and a Notary Public in and for the
6 State of Missouri, do hereby certify that I am employed by
7 the Administrative Hearing Commission of the State of
8 Missouri to record verbatim, by machine shorthand, the
9 proceedings herein and thereby am the official reporter for
10 the Commission in this matter, that I was personally
11 present at said hearing and reported said proceedings, and
12 the machine shorthand notes so made at the time and place
13 mentioned on the title page hereof were transcribed under
14 my direction and supervision by means of computer-aided
15 transcription, and that the foregoing pages constitute a
16 true, complete, and accurate transcript of the tape
17 recording and my said machine shorthand notes.

18 Witness my hand and seal this 18th day of
19 August 2023.

20 My Commission expires July 24, 2025.

21
22 Ginger R. Sommerer, CCR, RPR
23 Notary Public, State of Missouri
24 Commissioned in Cole County
25

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BEFORE THE
ADMINISTRATIVE HEARING COMMISSION
STATE OF MISSOURI

DELTA EXTRACTION, LLC,)	
)	
Petitioner,)	Case No. 23-0608
vs)	
)	
DEPARTMENT OF HEALTH and)	
SENIOR SERVICES,)	
)	
Respondent.)	

STAY HEARING
Monday, August 14, 2023
Administrative Hearing Commission
131 West High Street, Third Floor
Jefferson City, Missouri

BEFORE:

CAROLE L. ILES
Commissioner.

VOLUME II, PAGE(S) 160 THROUGH 263

REPORTED BY (WEBEX):

Ginger R. Sommerer, CCR
Registered Professional Reporter

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1 P R O C E E D I N G S

2 COMMISSIONER ISLES: We are back on the record. I
3 think we are still on Petitioner's case.

4 And we're ready for you to call your next witness;
5 is that correct?

6 MR. HATFIELD: That's correct, Commissioner. The
7 Petitioners call Rachael Herndon.

8 (Witness sworn.)

9 RACHAEL HERNDON DUNN, being sworn, testified as follows:

10 DIRECT EXAMINATION BY MR. HATFIELD:

11 Q Good afternoon. Would you please state your name
12 and spell it for the record, please.

13 A My name is Rachael Herndon Dunn, R-A-C-H-A-E-L
14 H-E-R-N-D-O-N D-U-N-N. I am COO, Chief Operational
15 Officer, for Delta Extraction.

16 Q And the Commissioner has in front of her
17 Petitioner's Exhibit 2, which I think is also in front of
18 you. This is an order of immediate suspension addressed to
19 Delta Extraction, Ms. Rachael Herndon. And are you the
20 same person who's addressed here?

21 A That's me.

22 Q And how long have you been -- Well, so are you the
23 State's, kind of, contact person?

24 A Yes.

25 Q And how long have you been that person?

1 A I have been the official contact person for a
2 couple months. The ownership transfer went through. I
3 have been the de facto contact person since inception. We
4 got our approval to operate in October of '22.

5 Q All right.

6 A Or '21.

7 Q And are you -- would you describe yourself or not
8 as sort of the first line of interaction with the
9 regulators?

10 A Yes.

11 Q And can you just very briefly describe your
12 approach to your interactions with the regulators, on
13 behalf of Delta?

14 A We are very open. We are very proactive.
15 Obviously, this is a new industry; so it's important to
16 keep communication as open as possible, to make sure
17 there's no confusion.

18 Q We've heard some discussion already about a
19 compliance officer. Are you familiar with someone who is
20 referred to as a compliance officer for Delta?

21 A Yes.

22 Q Who is that?

23 A Our current compliance officer, and for about the
24 last year, is Heather Bilyeu.

25 Q And can you spell that?

1 A H-E-A-T-H-E-R B-I-L-Y-E-U.

2 Q And how often do you communicate with Ms. Bilyeu?

3 A At the very least, a couple times a month,
4 sometimes as much as several times a week. It depends on
5 what's going on.

6 Q In what forms do those communications take? Are
7 we talking emails, phone calls? What are we talking?

8 A Phone, text, and email.

9 Q All right. Before we had even more time for you,
10 I had promised the Commissioner that I was probably only
11 going to ask you one question, which is, as far as this
12 order of immediate suspension goes that you received,
13 you're familiar with its requirements?

14 A Yes.

15 Q Part of what the Commissioner has to decide -- or
16 consider, I should say, is: What is the harm to Delta in
17 having this order of suspension that was immediately put
18 into place? Can you tell her?

19 Q There are a variety of ways that we have been
20 harmed. Immediately, with the order of suspension, our
21 reputation was damaged. And we had over \$10 million of
22 product on our site immediately locked up. Additionally,
23 we have done sales with 135 other licensees. We've done
24 over \$20 million in sales. And all of that sits unlocked,
25 that which isn't sold.

1 We have produced and sold over 1.3 million units
2 of product with no complaint, no concern; and they just
3 continue to sit there. We've serviced a quarter of the
4 industry. We are a big part of the stability of the
5 industry as a whole. And people's -- well, like whether
6 you're a dispensary or you're another manufacturer, you
7 have a ton of inventory that's sitting there locked up,
8 taking up valuable real estate, because this is a billion
9 dollar industry. It moves fast.

10 Q And as far as the current order of suspension,
11 which the Commissioner can look at here, it shut down all
12 operations, froze all the product. Fair to say? Is that
13 right?

14 A Yes.

15 Q Did you comply with all of the orders --

16 A Yes.

17 Q -- that were in the order of immediate suspension?

18 A Yes. The DCR employees were on-site before I
19 received this, shutting down the facility, with Mr. Maritz,
20 Mr. Weiss. And all operations ceased. No sales went out.
21 We're no longer processing orders. Nothing is happening.

22 Q As the point person for regulations -- or the
23 regulators, I should say, did you have any communications,
24 prior to the order of immediate suspension, expressing the
25 Department's concerns about any of the issues we've talked

1 about today?

2 A I had no communication from DCR employees that we
3 were under investigation. I had no inquiries, I had no
4 requests, I had no clue that this was going to happen, from
5 DCR. It was truly a shock. And I'm astonished, still.

6 Q We have the immediate order of suspension, we have
7 some other documents. But have you been notified of what
8 it is that Delta could do to address the Department or
9 Division's concerns about an imminent threat to public
10 harm?

11 A As far as remediation options, no; like there
12 hasn't really been a path forward. Whenever we received
13 the immediate suspension, we were confused as to what they
14 were talking about. This whole time we thought we were
15 doing right by the State, that they were fully aware.
16 They've admitted more than once that they were fully aware
17 of our processes, of our SOPs. And to this day, even
18 reading their follow-up agenda, I am baffled.

19 Q So let me back up just a little bit, -- we talked
20 about harm -- just to have you elaborate on a couple
21 things. Can you give us some magnitude of how much
22 product, either, you know, the amounts or the dollar
23 values, Delta Extraction was producing per week or per
24 month before this immediate order of suspension?

25 A Absolutely. And, obviously, this is scaled. In

1 February, the adult use program took off; the market
2 completely opened to 21 plus, and production obviously
3 scaled to meet that demand as much as we possibly could.
4 In the last six months, we have sold over \$12 million in
5 distillate.

6 And a lot of -- and that, obviously, once it
7 leaves our facility, it goes to other manufacturers who
8 create it and put it into products. A lot of those
9 products that use our distillate are leading products on
10 the market, undisputably. They continue to be. On the
11 dispensary side, people continue to ask for them and have
12 confusion as to why they apparently aren't safe, according
13 to DCR.

14 Q And so were this order of suspension not in
15 effect, I guess, is Delta Extraction ready, willing, and
16 able to produce products for dispensaries? Let's start
17 there.

18 A Correct. Yes.

19 Q Yes. And like -- I guess what I'm trying to
20 understand is: What could you be doing if she lift -- if
21 the Commissioner were to lift this order, right, how much
22 could you do in the next couple of weeks?

23 A To be fully candid, as far as the license is
24 concerned, as operators, the facility is no longer in
25 condition to operate. It was in that condition whenever

1 DCR left it on August 2nd. We could have reopened the next
2 day, especially if we had a remediation plan regarding
3 their concerns that we weren't aware of.

4 But now there's been a few things that have
5 changed in what has become an absolute circus over the last
6 two weeks. We went from being a pillar and a billion
7 dollar legitimate industry to feeling like regulators took
8 a bazooka to our industry.

9 Q So let me -- that's a good point. Let me try it
10 this way. Can you share with us some -- maybe value is the
11 way to put it. Had the Department not issued this order of
12 immediate suspension August 2nd, what kind of revenue would
13 you have had in August?

14 A I have no doubt that in the month of August, we
15 would have pulled down between \$8- and \$15 million,
16 depending on the market. It continues to move fast.
17 Demand continues to improve, likely because of the high
18 quality of products available on the market, compared to
19 alternative markets, including the other markets; like you
20 can go into gas stations today and buy cannabinoids I would
21 never even consider putting into my body, and that's fine,
22 according to DCR. But I don't know anymore.

23 Q So prior to today, had you heard, had any
24 communication from the Department, in your role as the main
25 contact, suggesting that you should issue any product

1 recalls?

2 A No.

3 Q Have you had any communications from the
4 Department that you should inform consumers that there's
5 any problem with any of the product that has been
6 manufactured at your facility?

7 A No.

8 Q Has the Department ever told you that any product
9 manufactured by Delta is dangerous to consume?

10 A No. In fact, prior to this order of immediate
11 suspension, we hadn't had a single violation. We had no
12 awareness that we were doing anything the Department didn't
13 like, let alone was illegal.

14 Q Has the Department ever told you that there is any
15 -- that they have any concerns about product safety?

16 A None till this; and by this, I mean the suspension
17 and everything since.

18 Q Exhibits -- did you prepare some spreadsheets
19 about product that is currently on administrative hold as
20 part of the order of immediate suspension?

21 A Yes.

22 Q And Exhibits 15 and 16, which are --

23 MR. HATFIELD: Commissioner, you have them filed
24 but they're not printed. It's like that other spreadsheet
25 we looked at.

1 BY MR. HATFIELD:

2 Q Did you create Exhibits 15 and 16?

3 A Yes.

4 Q And I'll tell you that both of those say Man 22
5 products on hold.

6 A Yes.

7 Q What does that mean?

8 A Those are report exports from Metrc software of
9 all of our product that is currently on hold.

10 Q And so --

11 A At the facility, just to be clear. Once it leaves
12 the facility, it's under the -- another facility's license.

13 Q So I don't know if you can do this by memory. Can
14 you just kind of explain to the Commissioner what she's
15 going to see when she looks at Exhibit 15 and 16? What do
16 those spreadsheets tell her?

17 A You're going to see, basically, an entire
18 inventory of what is on-site right now, including Midwest
19 Magic products in final form, including Conte products in
20 final form. You're going to find wholesale liters, several
21 hundreds of them. Everything is measured in grams, for
22 reference. And that's what's sitting there, as far as we
23 know. Obviously, the chain of custody has been broken a
24 couple times, and we have obviously been unable to verify
25 our inventory on-site, especially since the burglary.

1 Q So, coming back to the burglary in a minute, but
2 can the Commissioner -- when she looks at Exhibit 15 and
3 16, will she be able to see the different brands, Conte
4 versus Midwest Magic?

5 A Yes, in most cases. I will say, if you see
6 something that looks like 24K gold with no brand, that's
7 going to be Conte. Midwest Magic is specified. Midwest
8 Magic also uses a different type of oil than Conte
9 products. Additionally, any white labeling agreements,
10 those are specified further in the product name.

11 Q All right. There was some discussion with
12 Mr. Maritz about the ability to access Metrc and whether
13 you had to go into a room and scan a card. It sounds like
14 you're able to access Metrc without being in the facility;
15 is that --

16 A I could pull up Metrc on my phone right now.

17 Q Okay.

18 A It's just software.

19 Q All right. And do you have like a login or
20 something?

21 A You do have a login. You get it whenever -- your
22 agent ID -- you have to have an agent ID in order to access
23 that.

24 Q Okay. And so you created two different spread-
25 sheets, 15 and 16. What's the difference between them, do

1 you remember? That's okay.

2 A I believe one is products held and one is
3 inventory. I believe they're also really hard to print
4 off, Metrc exports; so I don't have an explicit copy, but I
5 believe that's what we're talking about.

6 Q All right.

7 COMMISSIONER ILES: Can I ask a question about
8 these exhibits, Mr. Hatfield?

9 MR. HATFIELD: Of course.

10 COMMISSIONER ILES: I'm not seeing anything
11 that -- I mean, I'm seeing the headings for the columns,
12 but I don't see anything that -- what were you saying it
13 said? Inventory or inventory held?

14 THE WITNESS: I'm going to be honest. I did a lot
15 of report exporting over the last couple of weeks.

16 COMMISSIONER ILES: Okay. I just -- I don't see
17 anything that -- a title of any kind. We just have like a
18 number for the Excel, for the document. But I think -- I'm
19 sure I'm looking at the same thing.

20 MR. HATFIELD: Is there something I should do
21 there, Commissioner? I'm sorry.

22 COMMISSIONER ILES: Well, I'm just asking you a
23 question as far as, you were -- when you were talking to
24 the witness, you referred to them by -- as if there was a
25 title to the document. The exhibits that I am looking at

1 right now online do not have a title; they just have a
2 number, a document number and Excel. That's -- they don't.

3 So I don't know which one. You were saying they
4 were two different ones. I can see that they list products
5 and I can see that they list Source Harvest quantities and
6 testing; but as far as which one's which, if that's
7 important to your case, I can't tell the difference. I
8 just wanted you to know that.

9 MR HATFIELD: You just nailed it.

10 BY MR. HATFIELD:

11 Q So, Ms. Herndon, let's just explain whether it's
12 important to our case, right? The Commissioner has two
13 spreadsheets. I think what I heard you saying is: This is
14 all product that's in the building?

15 A Yes, to my knowledge.

16 Q Some of it is what you're calling inventory,
17 right?

18 A Yes.

19 Q And some of it is held?

20 A All products held. And to be clear, all of our
21 products are under hold right now.

22 Q Yeah. So that was where I was going to go.
23 Regardless, that entire universe is on hold?

24 A Yes.

25 Q And you're in compliance with that; you're not

1 moving any of that product?

2 A We have not moved anything.

3 Q Well, I want to --

4 MR. HATFIELD: Let me go ahead and move the
5 admission of Exhibits 15 and 16.

6 MR. DOUGLASS: I thought we stipulated.

7 MR. HATFIELD: Oh, we stipulated; so I move the
8 admission, and we've stipulated.

9 COMMISSIONER ILES: 15 and 16 are admitted.

10 (PETITIONER'S EXHIBITS 15 AND 16 WERE RECEIVED
11 INTO EVIDENCE AND MADE A PART OF THIS RECORD.)
12 BY MR. HATFIELD:

13 Q Okay. Now, so those are the products that are in
14 your facility. But are you aware of whether there are
15 other products -- Well, let me do it this way.

16 On the order of immediate suspension, the order of
17 immediate suspension says that an administrative hold --
18 I'm paraphrasing, but all marijuana in the facility or
19 originating from the licensee. So are you aware of any
20 products that are not in the facility but originated from
21 Delta that are also under administrative hold?

22 A Yes. To my knowledge, everything that we have
23 sold to other facilities, whether it's manufacturing or
24 dispensaries, is on hold in the open market today.

25 Q And is there any way for you to tell how much

1 product that is?

2 A Explicitly, no. I can infer that it's got to be
3 between \$15- and \$30 million worth of product, as far as
4 consumer level value. And then, additionally, obviously,
5 there's other manufacturers who have -- I don't know how
6 many liters on hand. And each liter of distillate used to
7 be worth between \$8- and \$15,000, based on the market.

8 Q So, now, you said used to be worth. Do you know
9 what's happened to the market since the order of
10 suspension?

11 A You can now -- not you. But a licensee can buy a
12 liter of distillate for upwards of \$40,000 a unit today.

13 Q So that the price has --

14 A And, obviously, that cost will be passed on to the
15 consumer.

16 Q The price has tripled --

17 A Yes.

18 Q -- since this order freezing all of this
19 distillate?

20 A Yes.

21 Q And were you able to figure out, at least for some
22 dispensaries, which products were on hold?

23 A If what?

24 Q Were you able to access some Metrc data on any
25 dispensaries?

1 A I can access the -- the licenses that I have
2 access to. I have asked our partners to also send me
3 exports of theirs, if they feel comfortable, just so we can
4 kind of monitor the situation and figure out what's going
5 on, figure out if it's consistent across all the licensees,
6 because we have no way of knowing. Every independent
7 facility only has access to their own logs, their own
8 inventory.

9 Q And so there's an Exhibit 14, P 14, that is also a
10 spreadsheet. Is that something you prepared?

11 A Yes.

12 Q And is that a dispensary Metrc report?

13 A Yes.

14 Q And did you also get -- is that also through
15 Metrc?

16 A Yes.

17 MR. HATFIELD: All right. I don't know if we
18 stipulated to it or not, but I move the admission of P 14.

19 MR. DOUGLASS: No objection.

20 COMMISSIONER ILES: P 14 is received.

21 (PETITIONER'S EXHIBIT 14 WAS RECEIVED INTO
22 EVIDENCE AND MADE A PART OF THIS RECORD.)

23 BY MR. HATFIELD:

24 Q And does that spreadsheet show the Commissioner
25 basically the same data or different data?

1 A That's for DIS78, correct?

2 Q Where do we find that, DIS78?

3 A If so, yes. It's not --

4 COMMISSIONER ILES: There's no heading. That's
5 what I am trying to tell you guys. When I open the
6 spreadsheet, I see the headings of the -- on the columns,
7 but there's no name or heading on the document saying this
8 is what this is.

9 MR. HATFIELD: Okay.

10 BY MR. HATFIELD:

11 Q So the documents you presented, you prepared for
12 us as an exhibit, was from a dispensary?

13 A Yes.

14 Q Yeah, okay, all right. Let's -- Mr. Maritz
15 covered a lot of this, so --

16 COMMISSIONER ILES: Mr. Hatfield, did I just admit
17 14? I'm sorry.

18 MR. HATFIELD: I hope you did.

19 COMMISSIONER ILES: Okay.

20 MR. HATFIELD: You can do it again, though.

21 COMMISSIONER ILES: No.

22 MR. PEARSON: You did.

23 COMMISSIONER ILES: Good. I just didn't write it
24 down.

25 BY MR. HATFIELD:

1 Q All right. Let's ask a couple of things here that
2 have come up during this hearing. You've been sitting here
3 the whole time, right?

4 A Yes.

5 Q And you heard the discussion about: Facility gets
6 shut down on August 2nd, and then there's a break-in, from
7 want of a better term, on August 7th, right?

8 A Yes.

9 Q Did you, as the contact with the regulators, ask
10 for permission to have security in the facility between
11 August 2nd and August 7th?

12 A I do not recall that one specifically. We do have
13 an on -- we have a security guard, we have a security
14 director, who has been present this whole time. And
15 operational background, whenever they came in on the 2nd,
16 they said everyone had to go, no one could go in, no one
17 can go around it.

18 We would have been -- would have loved to have
19 someone. Today there is armed security there. They have
20 been told to stay off the premises (indicating quotes).
21 And so they are probably 50 to 100 feet back from the
22 building.

23 Q They have been told by whom to stay off the
24 premises?

25 A DCR.

1 Q And I guess -- and maybe I didn't understand. We
2 were talking. So, after the suspension on August 2nd, you
3 did ask the Division for permission to access the facility?

4 A Yes. They were -- and Jack spoke to this earlier.
5 They went on-site in order to do backups of the servers so
6 they could get a copy to DCR; also, transition our own
7 security processes, themselves. To this day, because of
8 the remoteness of the location, which is obviously a
9 double-edged sword in this instance, cloud capability was
10 not available. It's rural Missouri. It's just not
11 possible.

12 So we were in the process of making, explicitly,
13 copies of the servers, which had, I believe, 84 days of
14 storage on them. We are required to have 60 days of
15 storage. We store as much as we possibly can on those
16 servers.

17 Q All right. You heard some discussion about the
18 break-in. And Mr. Douglass was asking Mr. Maritz questions
19 about who knew that the State was coming back on the 7th.
20 Do you remember that?

21 A Yes.

22 Q I think Mr. Maritz said he thought you and the
23 director of security. That was his testimony. So did you
24 tell somebody to steal the servers?

25 A I did not, no. Those were incredibly valuable to

1 me. I would say they were priceless, explicitly to our
2 organization.

3 Q And who is your director of security?

4 A Joe Patterson.

5 Q And does Mr. Patterson have a professional
6 background of any kind?

7 A He has a professional background in law
8 enforcement and currently serves as the executive -- of the
9 Fraternal Order of Police for St. Louis County.

10 Q Do you know, is he what's called a POST-certified
11 police officer?

12 A He is.

13 Q Are you aware of anyone at Delta who instructed
14 anyone to steal or destroy the servers?

15 A No. Again, those were valuable to us, for obvious
16 reasons. And I continue to be very upset that they're
17 gone.

18 Q Okay. I think we covered this. But in looking
19 through the spreadsheets of the product that is in your
20 inventory or otherwise on hold, the Commissioner can tell
21 from looking at that that some of that product is Midwest
22 Magic brand product, right?

23 A Yes.

24 Q And we talked about this with Mr. Maritz, but I
25 just want to ask if you agree. After looking at the

1 affidavits and hearing all the testimony, do any of the
2 issues that the Division has raised have to do with the
3 Midwest Magic product?

4 A No.

5 Q Are you aware of any information that there is any
6 danger to the public if they were to, well, consume, let's
7 start with, any of the product that has already been tested
8 and is out with dispensaries?

9 A No.

10 Q Are you aware of any information that any of the
11 distillate that would go to manufacturers is, in any way, a
12 danger to the public?

13 A No.

14 Q Aware of any product that has ever been produced
15 by Delta Extracting that is a danger to the public?

16 A No.

17 MR. HATFIELD: I don't have any further questions.

18 COMMISSIONER ISLES: Cross-examination,
19 Mr. Douglass.

20 MR. DOUGLASS: Yes. Thank you, Commissioner.

21 CROSS-EXAMINATION BY MR. DOUGLASS:

22 Q Good afternoon.

23 A As a reminder, I'm hard of hearing.

24 Q Sorry. I will --

25 A You can help me out.

1 Q And I am soft-spoken. I apologize.
2 (Discussion off the record.)
3 MR. DOUGLASS: Before we go on, I think we glossed
4 over the stipulations. It might be helpful to address that
5 now.
6 MR. HATFIELD: Sure. Let's go ahead and do that.
7 So, Commissioner, I believe we have a stipulation.
8 We move the exhibits of Petitioner 1, which is actually the
9 rules -- and, actually, I think the stipulation is -- we
10 would ask the Commission, to the extent necessary, to take
11 judicial notice of earlier versions of that rule, which are
12 in the briefings of both parties.
13 COMMISSIONER ILES: Yeah. We will take judicial
14 notice of those.
15 MR. HATFIELD: Thank you.
16 P 2, Petitioner 2, is the order of immediate
17 suspension that we just discussed with this witness. P 3
18 is an email from Ms. Kirkweg related to that. P 4 is a
19 summary of a conference call. So let's just stop right
20 there and move the admission of P's 1 through 4. I believe
21 we have a stipulation.
22 COMMISSIONER ILES: Exhibits 1 through 4 are --
23 MR. DOUGLASS: Yes.
24 COMMISSIONER ILES: -- are received.
25 (PETITIONER'S EXHIBITS 1 THROUGH 4 WERE RECEIVED

1 INTO EVIDENCE AND MADE A PART OF THIS RECORD.)

2 MR. HATFIELD: And, Commissioner, just so you
3 know, P 4 has some overlap with Defendant's Exhibit E,
4 which we'll also have a stipulation on here in a moment.

5 I think that's it, Josh, on my side.

6 MR. DOUGLASS: Is it?

7 COMMISSIONER ILES: You have some other exhibits.
8 Are you not going to offer them?

9 MR. HATFIELD: 17 through 19?

10 COMMISSIONER ILES: I don't have them in order
11 now; so I honestly cannot tell you. I don't think we have
12 5 or 6 or 7.

13 MR. HATFIELD: I wasn't going to offer those. We
14 don't have 28, which is Mr. Suntrup's article. I wasn't
15 going to -- for that either.

16 COMMISSIONER ILES: No. We don't have that. Do
17 you want me to tell you the ones we have, so you can check
18 them off and then tell me what's left?

19 MR. HATFIELD: That would be great.

20 COMMISSIONER ILES: Because the list I just made
21 is not in order, so it's kind of confusing. So we have 20
22 through 27 -- those came in all together -- 21 -- 20, 21,
23 22, 23, 24, 25, 26, and 27.

24 MR. HATFIELD: Yeah.

25 COMMISSIONER ILES: And we have 29, 12, 13, 8, 9,

1 10, and 11. Witnesses have referred to 7 and 19; but they
2 were not admitted, according to my notes. So 7 and 19 are
3 not in. 15, 16, and 14 have been admitted. And just now
4 we admitted 1, 2, 3, and 4.

5 MR. HATFIELD: Yeah. That's all.

6 COMMISSIONER ILES: So that's all the Petitioners
7 are going to offer?

8 MR. HATFIELD: Yes, ma'am.

9 COMMISSIONER ILES: Okay. Thank you.

10 MR. HATFIELD: Josh, if you needed some off our
11 list, I will stipulate.

12 MR. DOUGLASS: I would do P 7, since I asked
13 questions about it.

14 MR. HATFIELD: Stipulated.

15 MR. DOUGLASS: Same with P 19, since I asked
16 questions about it.

17 COMMISSIONER ILES: 7 and 19 are received.

18 (PETITIONER'S EXHIBITS 7 AND 19 WERE RECEIVED INTO
19 EVIDENCE AND MADE A PART OF THIS RECORD.)

20 MR. HATFIELD: So where are we? Cross.

21 MR. DOUGLASS: No. Then we were going to
22 stipulate to Respondent's, yeah. Forgot about those.

23 MR. HATFIELD: Go ahead.

24 MR. DOUGLASS: We were going to stipulate to the
25 admission of DHSS Exhibit R.

1 COMMISSIONER ISLES: I'm sorry. Exhibit R?
2 MR. DOUGLASS: R, which is the affidavit.
3 COMMISSIONER ISLES: Of Ms. Kirkweg?
4 MR. DOUGLASS: Yes.
5 MR. HATFIELD: Stipulated.
6 COMMISSIONER ISLES: Okay.
7 MR. DOUGLASS: Exhibits A and B.
8 MR. HATFIELD: Stipulated.
9 COMMISSIONER ISLES: Those are photographs?
10 MR. DOUGLASS: They are.
11 COMMISSIONER ISLES: Okay.
12 MR. DOUGLASS: Exhibit D.
13 MR. HATFIELD: Stipulated.
14 MR. DOUGLASS: Exhibit E.
15 MR. HATFIELD: Stipulated.
16 MR. DOUGLASS: F.
17 MR. HATFIELD: Stipulated.
18 MR. DOUGLASS: G and H.
19 MR. HATFIELD: Stipulated.
20 MR. DOUGLASS: So I believe those are all exhibits
21 by Respondent, except C.
22 COMMISSIONER ISLES: I don't think I have an H.
23 MR. HATFIELD: H is a video recording that I
24 believe --
25 COMMISSIONER ISLES: Oh, yeah, yeah. I have

1 actually watched that.

2 It's your conference call?

3 MR. DOUGLASS: Yes.

4 COMMISSIONER ILES: Yeah, yeah, okay.

5 MR. DOUGLASS: It was attached to one of the

6 emails; so doctrine of completeness.

7 COMMISSIONER ILES: Okay. So A, B, -- did you say

8 C?

9 MR. DOUGLASS: I did not say C.

10 COMMISSIONER ILES: You skipped C.

11 MR. DOUGLASS: That's the only one we are not

12 admitting.

13 COMMISSIONER ILES: Okay. So A, B, D, E, F, G,

14 and H are received, by stipulation.

15 (RESPONDENT'S EXHIBITS A, B, D, E, F, G, AND H

16 WERE RECEIVED INTO EVIDENCE AND MADE A PART OF THIS

17 RECORD.)

18 MR. HATFIELD: Correct.

19 MR. DOUGLASS: And R.

20 COMMISSIONER ILES: Yes.

21 MR. DOUGLASS: That's the biggie.

22 COMMISSIONER ILES: Yes. R is received, if I

23 didn't say that. It is. I checked the box; so I did mean

24 to receive it.

25 I'm not sure where we are now.

1 MR. DOUGLASS: Cross-examination.
2 COMMISSIONER ILES: We're on cross?
3 MR. DOUGLASS: Yes.
4 COMMISSIONER ILES: Okay.
5 MR. DOUGLASS: If I may.
6 COMMISSIONER ILES: Yeah, proceed.
7 MR. DOUGLASS: Thank you.
8 CROSS-EXAMINATION (CONTINUED) BY MR. DOUGLASS:
9 Q Is it Ms. Dunn, Herndon, or --
10 A Let's go with Ms. Herndon.
11 Q Ms. Herndon. Thank you.
12 MR. HATFIELD: You can say it's complicated. It's
13 okay.
14 THE WITNESS: It's also not the business of this
15 court.
16 MR. DOUGLASS: No.
17 THE WITNESS: Respectfully.
18 BY MR. DOUGLASS:
19 Q Ms. Herndon, what was your role again? You said
20 it kind of fast earlier. I didn't get it.
21 A I'm COO of Delta Extraction.
22 Q Okay. Are you employed by A Joint Operation?
23 A I am.
24 Q What is A Joint Operation?
25 A A Joint Operation is an ownership group that owns

1 50 percent of Delta Extraction. Delta Extraction
2 reimburses my time as consulting fees.

3 Q I see. So you don't get a -- you're not a direct
4 employee of Delta Extraction, correct?

5 A No.

6 Q You're essentially a contractor for Delta
7 Extraction?

8 A There isn't a contract; so I consider myself a
9 consultant for them, operational consultant.

10 Q You're not located in the geographic area where
11 the facility is located, correct?

12 A No.

13 Q And so it would -- you wouldn't have knowledge, if
14 I asked you what was going on at the facility in the last
15 week. Have you been down there?

16 A In the last week?

17 Q Yes.

18 A No.

19 Q Since the immediate suspension, have you visited
20 the facility?

21 A No.

22 Q How many facilities does A Joint Operation own?

23 A One.

24 Q And how long has A Joint Operation owned Delta
25 Extraction?

1 A DCR completed processing our ownership request a
2 couple months ago. We have been on-board since
3 commencement in October of -- in '20. We have filed three
4 ownership transfers. The first two seem to have been lost
5 by DCR representatives; and so the third one was filed
6 again in April and accepted this summer. So, officially,
7 we became owners this summer.

8 MR. HATFIELD: I'm sorry to interrupt. Ms. Dunn,
9 Ms. -- I think you're getting your microphone a little off.
10 (Discussion off the record.)

11 BY MR. DOUGLASS:

12 Q Okay. I'm just trying to get an understanding of
13 your background affiliation with a joint -- I'm sorry.
14 Delta Extraction.

15 So have you been the COO of Delta Extraction since
16 2021, when it started operations?

17 A I have held similar responsibilities for the
18 entirety of operation.

19 Q For Delta Extraction?

20 A Yes.

21 Q Okay. And that was pursuant to managerial over-
22 sight by A Joint Operation?

23 A Yes.

24 Q So have you had turnover at the facility since
25 2021?

1 A Not really, no. Actually, surprisingly so.
2 Mr. Maritz runs a really good team, and they're really
3 loyal to him. It's like a family out there. You could say
4 it bothers me; but they produced and sold almost
5 1.4 million units of product on this market. They're
6 working.

7 Q So the estimate of millions of Metrc tags probably
8 wasn't far off?

9 A Correct.

10 Q Thanks.

11 You talked a little bit about the volume of sales
12 that has occurred in the last year or so. Did you say
13 \$10 million in -- you've sold \$10 million in product in the
14 last -- what was the period of time?

15 A No. I said: In the last six months, we've sold
16 \$12 million in just distillate. To date, we have done over
17 \$20 million in sales. Those are accepted sales.

18 Q How much of that distillate had THC derived from
19 THC-A?

20 A Over 80 percent.

21 Q I think Mr. Maritz testified earlier that you're
22 not going to make distillate from THC-A-based concentrate
23 in the future; is that right?

24 A That is correct.

25 Q Okay.

1 A I don't believe we'll be making anything anytime
2 soon, just to be very, very clear.

3 Q So why is that?

4 A Our facility has been burglarized and devalued,
5 essentially, overnight.

6 Q So, in other words, if you had the keys, you
7 couldn't open tomorrow, correct?

8 A No.

9 Q And that's because you have to have a security
10 system to operate under the regulations, correct?

11 A There are several things we'd like to have. But,
12 essentially, yes, a security system would be the first
13 start. Having servers for that, having a full functional
14 system. We, to this day, as Delta Extraction operators,
15 have not taken a full inventory of damages. We haven't had
16 access. As far as I'm concerned, all I have is videos from
17 that night law enforcement was there. I genuinely don't
18 know what condition that facility is in.

19 Q You have had people go inside the building since
20 the servers were taken, correct?

21 A Yes.

22 Q They -- Mike -- or Mark Dahl, is that his name?

23 A Yes.

24 Q He went in on the evening of August 7th, with law
25 enforcement, and viewed the building, correct?

1 A Yes.

2 Q And didn't he send you and others, with A Joint
3 Operation, text messages about what he viewed?

4 A Yes. He sent us videos as well.

5 Q And didn't he indicate that he believed that no
6 product was taken in the break-in?

7 A There were mixed messages regarding that, to be
8 completely honest.

9 Q I'm sorry?

10 A The messages were mixed as to the condition of
11 inventory.

12 Q Mixed by whom?

13 A The messages I received from Mr. Dahl were
14 ambiguous and conflicting. He was obviously finding out a
15 variety of information while he was going through that
16 experience. (The witness shook her head.)

17 Q Okay. Have you requested to -- have you requested
18 from DCR access to the building to take inventory?

19 A Yes. I've also requested a list of all samples
20 they took and all personnel that has entered the property,
21 because not all have identified themselves, which makes it
22 impossible for us to give accurate door access logs,
23 manually, as requested under the suspension.

24 Q When did you request to go inside and do an
25 inventory?

1 A Explicitly, not at all.

2 Q You estimated that you would do millions of
3 dollars of sales in August but for the immediate
4 suspension. Is that fair?

5 A What was that again?

6 Q I said -- when you testified earlier, I believe
7 you testified that you would have sold millions of dollars
8 in product in the month of August if the facility hadn't
9 been shut down; is that right?

10 A Yes.

11 Q I believe there was testimony earlier that you
12 don't have any contracts to sell products out of Delta
13 Extraction.

14 A Can you reword that question? I'm not sure what
15 you mean.

16 Q Sure. You were here earlier when Mr. Maritz
17 testified, were you not?

18 A Yes.

19 Q And Mr. Maritz said that when Delta Extraction
20 wants to buy products, they go out on the market and they
21 just simply buy it; and when they want to sell products on
22 the market, they simply sell it; that there weren't
23 contracts that required long-term installments of sales or
24 purchases, correct?

25 A Correct.

1 Q Okay. So insofar as you were going to stop
2 selling distillate in August, that was derived THC-A, that
3 accounts for 80 percent of your prior sales, correct?

4 A Correct. And, just for clarity, we weren't going
5 to stop selling. We have about 1,100 liters on-site. We
6 stocked up for the rest of year. We were going to stop
7 producing it.

8 Q So you were going to sell distillate that you are
9 not permitted to manufacture?

10 A This was the prior plan, before the suspension.
11 And, to this day, I believe that we were permitted to
12 produce that and sell that.

13 Q I see. But Delta Extraction does not intend to
14 produce THC-A-derived THC products in the future, correct?

15 A Delta Extraction probably won't operate again in
16 the future.

17 Q If Delta Extraction does operate in the future, is
18 it your testimony, as COO, that it will sell THC derived
19 from THC-A?

20 A I think a lot of things have changed since
21 August 2nd; and I cannot for certain answer that in a black
22 and white way.

23 Q Are you able to say for certain what your sales
24 would have been in August but for the immediate suspension?

25 A If our operations had not been interrupted, our

1 plan was to use that stockpile that we've been pushing
2 through, for the rest of the year, and sell it.

3 Q By stockpile, you mean the stockpile of distillate
4 that includes THC-A as a foundation for the THC?

5 A Yes, federally-legal THC-A. And, just to be
6 clear, whenever I say I talk to regulators, I'm not just
7 talking to DCR. We talk to every layer of government. We
8 get the monopoly cars from the Franklin County DMV. We go
9 all the way up to the EPA. Adam has to talk to them
10 regularly. We have to --

11 We are accountable to every regulatory body, plus
12 DCR. And many of the regulations are conflicting, which is
13 why, if you look in our SOPs, you'll see reference to those
14 laws as well, to provide as much clarity as we possibly can
15 to our team, in the midst of an evolving -- a quickly
16 evolving industry.

17 We all want to do right by this industry. It's
18 huge. It's huge and it's susceptible to everything, all
19 the way up to securities laws. This is a billion dollar
20 industry. It deserves clarity.

21 Q Thank you.

22 You discussed earlier about the reports you pulled
23 from Metrc, showing products that remain on the facility
24 site; is that correct?

25 A Yes.

1 Q Those are Excel spreadsheets, correct?

2 A Yes.

3 Q They also describe where those products are
4 located within the building; is that right?

5 A Yes.

6 Q In other words, is there -- so technical question.
7 Is there like a -- there's like a radio signal that the
8 tags give, that are picked up and then track the product
9 throughout the building?

10 A I do believe that RFID stands for radio frequency
11 identifier.

12 Q Right.

13 A Just factually speaking. But you can check me on
14 that.

15 Q And so that's how Metrc would know if a product is
16 in the vault or on the manufacturing floor, for instance?

17 A Metrc knows where the product is because that's
18 where the team inputted into it. Until August 2nd we had
19 very little, if any, involvement or engagement. As you can
20 see, from exhibits that Mr. Hatfield provided to you, that
21 there were multiple correspondences where we could get no
22 answer or information from Metrc.

23 It is not fair to act like Metrc was really ever
24 present, except for providing software that we try to use.
25 Additionally, there was constant confusion between DCR and

1 Metrc as to who was to help with any glitch here or there
2 or what have you. Some included in these exhibits; some
3 not.

4 Q Your spreadsheet also talks about whether the
5 product is tested or not tested, correct?

6 A Yes. All inventory exports, like it will say
7 either test pass, test fail, test in progress, remediation.
8 There is a -- I want to say between eight and ten different
9 categories that products can be in the phase of testing.

10 Q There are many, many products -- and the
11 spreadsheet speaks for itself -- which have not yet been
12 tested at all. Is that true?

13 A Yes. It is a massive manufacturing facility.

14 Q So insofar as this spreadsheet shows anything, it
15 shows raw product; it does not show product which is
16 capable of being sold in the current state?

17 A We can only -- Well, if we're -- are we talking
18 wholesale or retail? Because we can only sell products in
19 final package form to retail. Wholesale, we do not need to
20 do that. That's very explicit in state guidance, as well
21 as the regs. They have provided -- literally, there is
22 guidance regarding transfers, where they made a map, which
23 has also caused confusion as well.

24 But, yeah, as far as being ready to retail, that
25 is all going to be in final packaging, tested, all that

1 jazz. Obviously, production was interrupted on the 2nd.
2 So you are going to see products in various stages of
3 operations and production, like.

4 Q And, in fact, a lot of this is actually Conte
5 product, is it not?

6 A That would make sense. They are the bulk of our
7 sales.

8 Q Conte is the bulk of your sales?

9 A Yes. And that's indicative in the exhibits.

10 Q And Conte is no longer affiliated, or you're no
11 longer affiliated with Conte after August 1st. That was
12 what Mr. Maritz testified, correct?

13 A We have had no operation since August 2nd. I'm
14 not really sure how we need to semantically structure that
15 one.

16 Q The testimony by Mr. Maritz is that there will be
17 no future dealings with Conte if you are reestablished as a
18 licensee. Is that a true statement?

19 A I believe that to be true, today. If you would
20 have asked us that three weeks ago, I don't think the
21 answer would be the same. A lot of things have changed
22 over the last two-and-a-half weeks.

23 Q And so, if you were to start selling again
24 tomorrow and Conte is no longer one of your customers, who
25 would be your primary customer?

1 A Are you referring to Conte as a customer or a
2 contractor?

3 Q Either/or. You just said they were your primary
4 purchasers.

5 A If we were to somehow magically, in another realm
6 of existence, begin operations again tomorrow, I do not
7 believe that our partnership with Conte would be
8 continuing.

9 Q What did Conte make in the facility on the
10 weekends?

11 A I believe they were making distillate.

12 Q Do you have any oversight over the distillate that
13 they make on the weekends?

14 A In the sense that I'm aware, yes; in the sense
15 that a jar of TCA -- THC-A and this look -- they look the
16 same. I'm not a scientist. I'm not a chemist. I -- the
17 only product that I can honestly make is: I can roll a
18 joint on my own time. I do not know how to manufacture
19 goods. So, in that sense, I am not qualified.

20 Q Who, from A Joint Operation or Delta Extraction,
21 was present on the weekends when Conte was using your
22 facility?

23 A I'm not aware of anyone from A Joint Operation
24 being present on the weekends.

25 Q What about anyone from Delta Extraction?

1 A You would have to ask Mr. Maritz that.

2 Q You're the C00, are you not?

3 A That would be me.

4 Q Have you obtained the police report from the

5 break-in?

6 A No.

7 Q Have you asked for it?

8 A Several times.

9 Q Are you aware of the status of the investigation

10 by the Franklin County Sheriff's Office?

11 A No. I believe that they turned over the scene.

12 And I'm incredibly disappointed in the current status of

13 the criminal investigation here because, again, that server

14 was priceless to us. To this day, I do not believe that we

15 did anything wrong. To this day, I believe that everything

16 we did was in the eyes, and the State was aware of.

17 Q Who did they turn the scene over to?

18 A What?

19 Q You said the Franklin County Sheriff turned over

20 the scene. Who did they turn it over to?

21 A You would have to ask Mr. Dahl or Mr. Weiss that.

22 They were both on-site that night. I was not.

23 Q There's a book there to your right, yes. Could

24 you turn to the tab that's marked Exhibit G?

25 A G, as in gorilla, right?

1 Q Actually, before you do that, could you turn to
2 Exhibit D.

3 You said earlier that you have security on-site at
4 the building; is that correct?

5 A No. We have a security director and we have a
6 security system. Our system was state-compliant. It had
7 been inspected several times, and we had received -- both
8 of our annual inspections were good. Our commencement
9 inspection was good. Our pop-up inspections were good.
10 Again, we had not had a violation until we got this order
11 of suspension.

12 Q I'm sorry. I don't think you understood my
13 question. You were talking about: Since the burglary, you
14 have had security guards monitoring the outside of the
15 building.

16 A I believe the guards have been there since the
17 7th.

18 Q Yeah. And you said that they were not allowed
19 within 150 feet of the building. Do you remember that?

20 A I did not specify a footage there. They were told
21 by DCR to stay off of, quote, unquote, the premises; and so
22 we have them on what is considered private property, owned
23 by the Maritz family.

24 Q If you turn to the last page of Exhibit D, have
25 you seen this before?

1 A No. I received a lot of emails from the State in
2 the last couple of weeks. This could have been attached to
3 it. But this is my first time truly seeing this.

4 Q So it's dated August 9th, is it not?

5 A This letter that you presented is dated
6 August 9th.

7 Q And it's addressed to you, is it not?

8 A What?

9 Q It's addressed to you?

10 A Yes.

11 Q I tell you what. If you want to take a minute and
12 look at the entirety of Exhibit D, please feel free to do
13 so.

14 A We're caught up. I recall everything but that
15 last page and, obviously, this first email at the very
16 beginning that did not include me.

17 Q And so these are emails back and forth that talk
18 about security at the building after August 7th?

19 A Yes.

20 Q Okay. And so the last page that you said you
21 hadn't seen before, you've seen variance requests?

22 A Oh, yeah; like I have no doubt that this was
23 attached to a flurry of emails that me and Ms. Kirkweg were
24 sending back and forth on that day. Obviously, getting our
25 facility burglarized caused a lot of panic and confusion

1 and need for immediate solutions that were very difficult
2 to get clear answers from, as you can see by these
3 incredibly long emails back and forth.

4 Q So this document says: This variance allows for
5 the Licensee's contractor, Wolfpack Security Solutions,
6 LLC, to provide armed 24/7 security at MAN00022 -- which is
7 your facility, correct?

8 A Yes.

9 Q And then it says: -- without the supervision of
10 the Licensee, so long as the contractor abides by the
11 stipulations outlined in the request approval provided on
12 August 9th.

13 And so has Wolfpack Security been providing
14 on-site security at the location, for the last week or so?

15 A Yes. And they will be there for the foreseeable
16 future.

17 Q All right. Could you turn to Exhibit E, please?

18 A E, as in elephant?

19 Q Actually, no. Turn to Exhibit G for me. Thank
20 you.

21 So, if you turn to the second page of Exhibit G --
22 if you want to take a minute to look at the whole document,
23 please do.

24 A Yes. This is correspondence between myself and
25 Ms. Kirkweg, including details from the security director,

1 Patterson, giving an update as to our progress and current
2 status of the facility.

3 Q If you look at Page 2 of that exhibit, there is a
4 fairly lengthy email. It takes up the whole page. It
5 looks like it's from you to Ms. Kirkweg. Could you read
6 the second-to-last paragraph that begins with "we
7 continue"?

8 A The second to last?

9 Q Yeah.

10 A We continue to be incredibly concerned as to the
11 criminal activity of the burglary and continue to advise
12 safety and security for all. The burglary was not just
13 felony property crimes, it was a felony white collar crime
14 against Delta Extraction as an entity. This act destroyed
15 priceless equipment to the Delta Extraction material and
16 impeded this investigation. The core team does not feel
17 safe, nor do those who live in and around the extended
18 property, due to the crime and the lack of systems and
19 systems repair interference and delays. We are activating
20 our entire network of resources to secure and protect the
21 property and facility.

22 Q Thank you.

23 What did you mean when you said this was a felony
24 white collar crime?

25 A Due to what -- the theft of this; like, this is

1 corporate espionage. I don't know who did this. I -- the
2 status of how I feel about the investigation now versus
3 before that theft is completely different. Like, we have
4 to treat this completely differently now. They -- whoever
5 did this stole priceless equipment that we needed,
6 ourselves.

7 We needed to make copies of it. We fully intended
8 for this to be just a normal interruption to operations --
9 there's a lot of confusion in this industry -- and that we
10 would be coming out on the other side fine. Because of
11 that, the entire picture has changed.

12 Q You're not aware of anyone who would want to
13 ensure that whatever was on the video logs was not seen by
14 the State?

15 A No. I genuinely don't know what those servers
16 could have had on the cameras, that anyone would have
17 thought that this was a -- that burglary was a good idea.
18 It doesn't make sense to me. I genuinely don't know.

19 Q What else was on the server, other than the video
20 logs?

21 A What was that?

22 Q What else was on the servers that were stolen,
23 other than the video logs and the access logs?

24 A The entire -- to my knowledge -- and this would be
25 better answered by Mr. Patterson or a representative from

1 Burnes Citadel -- all the camera footage was on there. We
2 had between 25 and 30 channels that were recording in 4K,
3 24/7. All the systems, the systems were damaged. So door
4 access, burglar alarms, all of that. I will say, as far as
5 door access, all that jazz, like that information is stored
6 by a separate software that we had to get from Burnes
7 Citadel at a later date. But it's all gone.

8 Q Have you interviewed Delta Extraction staff to
9 determine whether any of them were involved?

10 A I personally have not, no.

11 Q Has your director of security?

12 A I cannot speak for him, but I hope so.

13 Q Have you hired anyone from the outside to do an
14 investigation?

15 A Not yet. And, to be clear, as soon as
16 Franklin County sheriffs released the scene on the 7th and
17 it was entered the next day, especially with no cameras,
18 there's no chain of evidence. Like, I know that all the
19 legal minds in this room are aware of due process and
20 rules. And even pop culture reference, like, if it doesn't
21 fit acquit. Like, there's rules and there's reasons for
22 rules.

23 And I have no idea what's going on in that
24 building. I don't know what's there. I don't know what
25 has gone on since the 7th. And it's really, really sad,

1 because that was a huge business that we were so proud to
2 have built.

3 We bolstered this industry, we supported this
4 industry, and we cut costs low for consumers; and we did it
5 all, while being in constant communication with the State
6 and believing that our processes were allowed and
7 appropriate. All of our product was tested. And we have
8 no consumer complaints.

9 Q This facility is located in the middle of a, what
10 was it, 1,800-acre farm? Is that right?

11 A Yes.

12 Q And I assume it's down -- it's in the middle of
13 the farm, correct?

14 A It is right off of a road. And, just to be clear,
15 there's some securities considerations to this
16 conversation, because there is still marijuana product out
17 in the middle of the woods.

18 Q There is. And it is currently under armed guard,
19 pursuant to the variance request that you received. You're
20 also taking additional security steps to ensure the safety
21 of your product as well; is that correct?

22 A Of the products or the property?

23 Q Of both.

24 A Yes.

25 Q The access road to the facility, isn't it behind a

1 gate?

2 A Not that road. There are other roads that go into
3 the property that are behind gates.

4 Q In preparing to hand over the video logs to the
5 State, did you or anyone with Delta Extraction view those
6 logs between August 2nd and August 7th?

7 A I spot-check the cameras periodically. I also
8 make sure things are working. Until the red flags came up
9 on the 7th, everything seemed typical.

10 Q If I wanted to talk to someone at Conte about what
11 they did during the weekends when they were on the Delta
12 Extraction facility, who was in charge of that operation?

13 A Jason Sparks would be the best contact to talk
14 about operations of Conte and SND on the weekends.

15 Q Just so I'm clear, you don't know what happened on
16 the morning of August 7th when the servers were taken,
17 correct?

18 A I personally do not.

19 Q Don't have any idea what happened between
20 August 4th, which was Friday, and the end of the day
21 August 7th, when Mr. Dahl reported the broken window,
22 correct?

23 A I don't know anything about the condition of the
24 facility from the time Mr. Maritz and DCR representatives
25 left on Friday with the security company, regarding the

1 technology swaps, and towards the end of Monday, the 7th,
2 whenever the Delta Extraction team spoke on Monday morning.

3 We were aware of notifications, and we presumed it
4 to be weather-related because that's typical to our
5 operations, something expected and ongoing. And whenever
6 Mr. Dahl, who works on the adjoining ranch, let us know
7 that he thought a window was broken, I told him to go ahead
8 and contact police and get them up there to figure out what
9 had happened. This was in violation of the State's orders
10 to not have anyone there. I figured the police was
11 appropriate.

12 MR. DOUGLASS: Thank you, Commissioner. That's
13 all I have.

14 COMMISSIONER ILES: Redirect.

15 MR. HATFIELD: No questions, Commissioner. Thank
16 you.

17 THE WITNESS: Am I free?

18 COMMISSIONER ILES: Yes. You are excused.

19 (Witness excused.)

20 COMMISSIONER ILES: All right. Mr. Hatfield, did
21 you have anything further?

22 MR. HATFIELD: We do not. Petitioner rests,
23 Commissioner.

24 COMMISSIONER ILES: I do have one question that
25 maybe either one of you could provide. I'm a little

1 confused about the terminology. We were using THC, THC-A,
2 and cannabis oil -- or no, I'm sorry, CBD oil. One of the
3 witnesses mentioned CBD oil as if it were interchangeable
4 with THC-A. Is there anybody that could maybe provide a
5 little testimony on that to help me understand what those
6 three things are and how they are different?

7 MR. HATFIELD: Sure. Could we have maybe
8 five minutes to figure out who the best person is?

9 Well, unless you have someone.

10 Maybe somebody at the State knows the difference.

11 MR. DOUGLASS: I'm pretty sure we can cover it;
12 and if we don't satisfactorily, then we can call somebody
13 else.

14 COMMISSIONER ILES: Okay. Thank you.

15 I'm sorry. Mr. Douglass, you can call your first
16 witness.

17 MR. DOUGLASS: Thank you. I would call Brittany
18 Kirkweg.

19 BRITTANY KIRKWEG, having been previously sworn, testified
20 as follows:

21 DIRECT EXAMINATION BY MR. DOUGLASS:

22 Q Good afternoon, Ms. Kirkweg. We're going to go
23 fast because we are well over our time. You heard the
24 Commissioner's question just now. To the best of your
25 ability, could you just give a narrative response of what

1 your understanding of the differences in those compounds
2 are?

3 A So my understanding is that THC-A is -- when it is
4 heated, it becomes THC. And then -- Go ahead.

5 COMMISSIONER ILES: Okay. I had gotten that from
6 the testimony. But is THC-A the same thing as CBD oil?
7 Because it seemed -- somebody mentioned that as well.

8 THE WITNESS: So I -- again, you know, I oversee
9 our licensed facilities. I do not have direct personal
10 experience with manufacturing and how -- the science behind
11 THC, THC-A and CBD oil. So I can provide, you know,
12 general information. I can look and see if I have a better
13 definition within my affidavit.

14 MR. DOUGLASS: I think it's also addressed in the
15 regulations.

16 COMMISSIONER ILES: Okay. That's fine. You don't
17 need to do any more.

18 BY MR. DOUGLASS:

19 Q Ms. Kirkweg, your affidavit has already been
20 admitted into evidence. I don't want to do a lot of
21 duplication. But we've talked a lot about Metrc today.
22 What is Metrc?

23 A So Metrc is the state contract -- or holds the
24 state contract for seed-to-sale, which would be marijuana
25 seed-to-sale. So any marijuana, any THC, within a product

1 should be in Metrc from seed-to-sale, or immature plant.

2 Q And that's per department rule, correct?

3 A Yes. The Department requires all licensees to use
4 Metrc.

5 Q And then the constitution says all marijuana
6 should be grown in the state, correct?

7 A Yes.

8 Q So Metrc stands for something; is that correct?

9 A Yes.

10 Q I know you're dreading this question. What does
11 Metrc stand for?

12 A Metrc stands for Marijuana Enforcement Tracking
13 Reporting & Compliance.

14 Q And it is used by many states; is that correct?

15 A Yes.

16 Q Is it customized for the State of Missouri?

17 A There are -- yes, there are configurations that
18 are specific with our rules.

19 Q And what significance does Metrc have? Is it an
20 official record?

21 A Yes. Metrc is the State's official record for
22 inventory control. So everything that is within the Metrc
23 system is to be accurate. And there are also rules
24 regarding accuracy, errors, discrepancies, and such.

25 Q And so how does this DCR -- what does DCR stand

1 for?

2 A Division of Cannabis Regulation.

3 Q How does DCR use Metrc to monitor inversion
4 concerns?

5 A Yes. So, in our normal course of business, we
6 review Metrc information from licensees. Specifically, you
7 know, we can pull reports and things. And we look at
8 testing, look at production batches, we look at things that
9 are entered in the system by the licensee.

10 Q Metrc will allow the Department, in the event
11 there's a problem, to backtrack the lifecycle of that
12 product to its source, correct?

13 A Yes. So it is a seed-to-sale system, meaning
14 that, if I go look at a final product, I should know what
15 plants it came from.

16 Q And insofar as THC or other marijuana is added
17 into the system, will Metrc be usable?

18 A Sorry. Can you repeat the question?

19 Q Yeah. It was a bad question.

20 A Or reword.

21 Q Insofar -- if a manufacturer or -- inverts
22 marijuana, either by adding THC or adding marijuana from
23 California, for instance, into the production cycle, Metrc
24 is not going to catch that; is that correct?

25 A No. It would be done in adjustments, or could be

1 through -- well, as the examples we've seen here.

2 Q In the book to your right, could you turn to the
3 second-to-last page of Exhibit A.

4 Is this a Metrc tag?

5 A It is.

6 Q And so how does that tag -- how is that tag used?

7 A So that tag, if you walk into any licensed
8 facility that would be in compliance with tracking
9 requirements, you should be able to -- any marijuana
10 product would have a corresponding tag, and it would be in
11 the location in Metrc that it's deemed in the facility and
12 also would have the correct weight and the correct product
13 to attach that tag. So any product should have a
14 corresponding tag, and I should be able to find that
15 information in Metrc.

16 Q When the Department was recently in Delta
17 Extraction's facility, did it observe that product was all
18 tagged?

19 A No. Did not observe product that was all tagged.

20 Q Can you turn to Exhibit P 2? That would be on
21 your left.

22 You've seen this a few times today, correct?

23 A I have.

24 Q There are two reasons stated in this exhibit, for
25 the immediate suspension, correct?

1 A Yes.

2 Q You see the last bullet on the first page?

3 A Yes.

4 Q Could you read that for us.

5 A The last bullet on the first page: The Licensee
6 shall immediately work with DCR, through their compliance
7 officer, to reestablish remote access of the Licensee's
8 electronic video monitoring system. And it says: Pursuant
9 to 19 CSR 100-1.020(3)(A)(2), DCR will begin to assess the
10 Licensee fines for each day the Licensee is in violation of
11 19 CSR 100-1.090(1)(C)2.

12 Q So why is that directive in the order of immediate
13 suspension?

14 A So, at the time of immediate suspension, the
15 Department did not have remote access to the licensee's
16 electronic video monitoring system.

17 Q And that was on August 2nd?

18 A That is correct.

19 Q Was that just a few cameras, or was it the entire
20 video feed?

21 A To my knowledge, it was the entire video feed.

22 Q If you look on the second page, there's a
23 paragraph numbered 3, starting with "verify personnel."
24 Could you read that paragraph?

25 A Yes. Verify personnel will not have access to the

1 facility and/or will not complete any activities related to
2 the Licensee, including seed-to-sale system and statewide
3 track and trace system (Metrc) entries. The Licensee shall
4 remove access privileges from all employees and provide
5 verification through access privilege -- access privileges
6 have been removed. The Licensee shall provide a daily
7 electronic log of controlled entry for the facility to DCR
8 at CannabisComplaints@health.mo.gov by 9 a.m. central
9 standard time for the previous day until the Licensee
10 receives written notice from DCR.

11 Q And why was this directive important?

12 A So we could know who, if anyone, was entering the
13 facility when it was under suspension.

14 Q Why was it important to limit access to the
15 facility, following the order of immediate suspension?

16 A So we could be able to timely go through our
17 investigation and make sure that all evidence was
18 preserved.

19 Q Could you turn to Exhibit E on the right. It's
20 kind of a tennis match here.

21 On August 7th -- and this is already in the
22 record. So on August 7th you had a meeting with Delta
23 Extraction and its representatives, correct?

24 A That is correct.

25 Q I think virtually everybody here was in that

1 meeting; is that correct?

2 A I believe so.

3 Q And then the next day following that meeting, you
4 sent this email follow-up to Delta Extractions, correct?

5 A That is correct.

6 Q And then there's the hyperlink in your email.
7 That's the video, the recording, of the meeting, correct?

8 A Yes, yes.

9 Q During that meeting you read a document. Is
10 Page 2 and the rest of that exhibit your -- the document
11 that you read?

12 A It is.

13 Q So, at the bottom of the third page, could you
14 read the paragraph that begins "to address #1."

15 A I'm sorry. Can you repeat the page number?

16 Q Sure. You're on Exhibit E.

17 A Oh.

18 Q Third page.

19 A Yes.

20 Q If we had more time, we would have numbered
21 things. Sorry.

22 A Yes. So, to address #1, DCR received a credible
23 report that the Licensee was inverting marijuana product at
24 the licensed facility, meaning the Licensee was sourcing
25 marijuana or converted hemp from outside of a Missouri

1 licensed cultivation facility. Inversion of marijuana
2 product is a violation of Article XIV and 19 CSR 100-1.

3 Q Then after that you've listed all of the
4 regulations that are in play with inversion, correct?

5 A Correct.

6 Q And then the regulation actually tells us that, if
7 there's a credible threat of inversion, it is imminent harm
8 for purposes of the regulation, correct?

9 A Correct.

10 Q You didn't do this additional analysis of imminent
11 harm; the regulation says it is, correct?

12 A Yes.

13 Q If you go to the paragraph that begins with "to
14 address #2," can you read that for us?

15 A To address #2, DCR found data in the statewide
16 track and trace system (Metrc) demonstrating that the
17 Licensee is permitting marijuana product to enter the
18 regulated market without being compliantly tested.
19 Information in the statewide track and trace system shows
20 packages of marijuana product were increased in size by the
21 licensee after mandatory testing, which demonstrates the
22 product was not compliantly tested and also indicates
23 inversion.

24 Q Again, is that a scenario that the regulations
25 define as an imminent threat?

1 A It does.

2 Q Can you turn to Exhibit F? The last paragraph,
3 could you read that for us. Actually, what is Exhibit F?

4 A Exhibit F is communication between our department
5 and MoCann Trade.

6 Q And, just for the record, you're copied on this at
7 the top of the document, correct?

8 A Yes.

9 Q And so can you read that paragraph at the very
10 bottom?

11 A The very bottom of Page 1?

12 Q Correct.

13 A Okay. It is from Andrew Mullins to Amy / Andrea.
14 It says: Wasn't sure if there was a more direct contact in
15 your enforcement division to share this with. But along
16 the lines of below, we are still hearing of potential
17 engagement to certain licensees, and the likelihood of some
18 producers attempting inversion practices remain. Does DCR
19 have the capability to review extraction efficiency
20 percentages in production, to evaluate whether inverted
21 product is being introduced into the marketplace?

22 Q And does the Department have that ability?

23 A We do through our system.

24 Q Through Metrc?

25 A Yes.

1 Q And so what that means is: can you look to see if
2 volume is increasing in Metrc?
3 A Yes.
4 Q And did you do that?
5 A We did.
6 Q And you did it for Delta Extraction?
7 A Yes.
8 Q And we went through what you found earlier. I
9 think we started the day with that.
10 A Yes.
11 Q And those are set out in your affidavit, correct?
12 A They are, yes.
13 Q And so, when you see these increases in volume, as
14 are described in your affidavit, what does that indicate?
15 A It indicates inversion.
16 Q I think your affidavit spells it out in detail.
17 Is there anything that you would add, beyond what's in the
18 affidavit?
19 A Not at this time.
20 Q So, after you issued the order of immediate
21 suspension, DCR went to the facility on August 2nd; is that
22 correct?
23 A It was simultaneously.
24 Q Simultaneously. And so why did DCR go to the
25 facility site simultaneously?

1 A So DCR went to the site to be able to secure the
2 facility and ensure that evidence that we needed for this
3 investigation was preserved and that operations at the
4 facility had ceased.

5 Q Were you also trying to get access to video camera
6 feeds?

7 A Yes.

8 Q Was a tech called out to assist in getting that
9 completed?

10 A Yes.

11 Q Could you turn to DHSS Exhibit A.

12 Exhibit A, are these the pictures that DCR took
13 when they arrived on-site on August 2nd?

14 MR. HATFIELD: Object to a lack of foundation,
15 unless this witness can tell us that she took the pictures.
16 It's pure speculation.

17 MR. DOUGLASS: You stipulated to it.

18 MR. HATFIELD: I stipulated to the admission of
19 these exhibits. What they are would require a witness who
20 took them to tell us. They're definitely in the record.

21 COMMISSIONER ILES: I think he's correct. They
22 are in the record.

23 That's what I understood you stipulated to; that
24 they were admissible.

25 But for the witness to testify about something

1 that she doesn't have personal knowledge of, I'm not sure
2 that's -- well, I'm sure that's -- his objection would be
3 well-founded, is well-founded.

4 MR. DOUGLASS: So, just for the record, when we
5 discussed the admission of his records and my records,
6 there was no discussion that they would be stipulated to as
7 a concession to the other party and then not useable today.
8 That was simply not part of the discussion. This is about
9 as "trial by surprise" as I've ever experienced.

10 COMMISSIONER ILES: Can she identify, just tell me
11 what these are pictures of? If she knows what they are and
12 can tell me that --

13 MR. DOUGLASS: Absolutely. That's where I was
14 going to go.

15 COMMISSIONER ILES: She can say, that's a picture
16 of some boxes and some Bounty -- it appears to be some
17 Bounty paper towels, if she has personal knowledge of that,
18 even if she didn't take the picture. But I don't know.
19 It's just -- we do need to know what she knows and how
20 she's -- what the basis is for whatever it is she's going
21 to tell us about these pictures.

22 BY MR. DOUGLASS:

23 Q Ms. Kirkweg, the exhibits that were attached to
24 your exhibit are department records, are they not?

25 A They are.

1 Q And they are department records that you use in
2 your everyday job, correct?

3 A Correct.

4 Q They are kept in the regular course of business?

5 A Yes.

6 Q Do you know who took these pictures?

7 A I know that Heather and Adam were on-site that
8 day; and so one of them would have taken these pictures.

9 Q And do you know that they were taken on
10 August 2nd, 2023, at Delta Extraction's location?

11 A Yes. And if we -- the very last picture of the
12 exhibit also shows the date, with the electronic video
13 monitoring information and the time that they were taken.

14 Q Well, thank you, because I was going to go to that
15 page. What does the -- these are the security camera feeds
16 that were on-site on August 2nd; is that correct?

17 A Yes.

18 Q And when DCR left on August 2nd, were all of the
19 cameras working?

20 A To my knowledge, yes.

21 Q What are the security requirements for a
22 manufacturing facility?

23 A So, within our regulations, licensed and certified
24 facilities are required to have electronic video
25 monitoring. And, of course, there are particular

1 information about where cameras are required and where they
2 are not and the number of cameras. There is also intrusion
3 notifications and security. There are panic alarms. I
4 think those are the main types of security that's required
5 by regulation.

6 Q Were there any other issues DCR observed while
7 on-site on August 2nd?

8 A There were other noncompliance issues, yes.

9 Q DCR went back on-site on August 4th; is that
10 correct?

11 A Correct.

12 Q Why is that?

13 A As was spoken to earlier, there was a -- we needed
14 copies of the electronic video monitoring, to be able to
15 work through our investigation. And we were going to meet
16 the licensee on-site to work on obtaining this information.

17 Q Did you receive the information you were there to
18 get?

19 A We did not.

20 Q Why not?

21 A It was not available.

22 Q Did you have plans to go back and get it?

23 A Yes.

24 Q And what were those plans?

25 A There were plans made for two compliance officers

1 to go to the site on Monday to meet with the licensee.

2 Q On August 7th?

3 A Yes.

4 Q Was that date changed?

5 A It was.

6 Q Why was the date changed?

7 A There was an email from the licensee, and I don't

8 remember the particulars, but that something else wouldn't

9 be available; and to kill two birds with one stone, we

10 would have DCR staff go out on Tuesday.

11 Q And that was before you were aware the servers

12 were no longer there?

13 A Correct.

14 Q When did you find out that the servers were no

15 longer in the building?

16 A I was made aware the evening -- DCR was made the

17 evening of August 7th.

18 Q What were you notified?

19 A Notified that there was a burglary at

20 Manufacturing 22.

21 Q Were you told what was taken?

22 A Yes.

23 Q What were you told?

24 A I was told that security equipment was taken or

25 damaged.

1 Q Was there any report of marijuana product or
2 marijuana flower taken?

3 A There was no report that product was taken.

4 Q Have you ever been told that anything other than
5 the servers were taken from the building?

6 A Not to this point, no.

7 Q Did DCR go back to the building on August 8th?

8 A Yes.

9 Q And did you take pictures of the facility on that
10 date?

11 A Yes.

12 Q All right. For the record, you didn't take the
13 pictures; somebody from DCR took the pictures, correct?

14 A That is correct.

15 Q Are those pictures set out in Exhibit B?

16 MR. HATFIELD: Object to lack of foundation.
17 Somebody -- she just said somebody else took the pictures.

18 COMMISSIONER ILES: Someone else took the
19 pictures, okay. But help me out here, Mr. Hatfield. If I
20 have a picture of my dog that I didn't take but I know what
21 my dog looks like, I can identify it, correct?

22 MR. HATFIELD: Yes, ma'am. Absolutely.

23 COMMISSIONER ILES: So would you like to voir dire
24 this witness and find out what she knows about these
25 pictures before she testifies --

1 MR. HATFIELD: Yes.

2 COMMISSIONER ILES: -- or what do you want to do
3 here?

4 MR. HATFIELD: Yes.

5 COMMISSIONER ILES: Okay.

6 VOIR DIRE EXAMINATION BY MR. HATFIELD:

7 Q So, Ms. Kirkwood, the only way you know where
8 these pictures are taken is because of what somebody else
9 told you, right?

10 A Ms. Kirkweg. And these pictures were taken by my
11 staff, and these pictures matched the security pictures
12 that are -- have been taken with the --

13 Q Right, right, right. But the only way you know
14 that your staff took pictures at the facility is because
15 they told you that, right? You didn't see them take the
16 pictures?

17 A I did not physically see my staff, on-site, taking
18 pictures.

19 Q All right. You've never been to this facility?

20 A I have not been to Delta Extraction.

21 Q You've never seen anything inside the facility?

22 A Within our file folders, there are pictures of
23 previous inspections and such.

24 Q You've seen other pictures that somebody told you
25 were pictures of the facility, right?

1 A Yes.

2 Q But the Commissioner asked you about, you know, if
3 you know what your dog looks like. You don't know what the
4 inside of Delta looks like, do you?

5 A I'm not personally knowledgeable of the details of
6 what it looks like.

7 MR. HATFIELD: Thank you. That's all from me,
8 Commissioner.

9 COMMISSIONER ILES: Would you like to respond?

10 MR. DOUGLASS: Sure.

11 DIRECT EXAMINATION (RESUMED) BY MR. DOUGLASS:

12 Q Ms. Kirkweg, could you pull up DHSS Exhibit R,
13 that is your affidavit, and turn to Paragraph 39?

14 Could you read Paragraph 39?

15 A Yes. Exhibits A, B, C, D, E, F, G and H are
16 Department records kept in the normal course of business,
17 and it was the regular course of business of the Department
18 for an employee or representative of the Department of the
19 act, event, condition, opinion or diagnosis recorded to
20 make the record or to transmit information thereof to be
21 included in such record; the record was made at or near the
22 time of the act, event, condition, opinion or diagnosis.
23 The records attached hereto are the original or exact
24 duplicates of the original.

25 Q And so what does the first picture show.

1 COMMISSIONER ILES: Okay. So here's where we are.
2 So these pictures are in evidence.

3 I would really like to know what they are pictures
4 of, Mr. Hatfield, just for the record; I would like to know
5 that.

6 MR. HATFIELD: Me too.

7 COMMISSIONER ILES: But what you're objecting to
8 is that this witness -- Okay. It's a business record.
9 That's what her testimony, just now reading from the
10 affidavit, established, which makes it admissible, which
11 means it can come into the record and I can look at it and
12 consider it. But that's not the issue that we're arguing
13 about.

14 What we're arguing about is her testimony
15 explaining what the picture is, when she has already told
16 us she has no firsthand knowledge of what these are. She
17 knows what they are because somebody told her. But she
18 didn't go out to the facility. And she doesn't have
19 information about what these -- where these things were and
20 what they are.

21 And so I'm -- I mean I think the objection is
22 well-founded. But I also would like -- I would really like
23 to know what these pictures are and why they are relevant.
24 And is it really that important for you to keep her
25 testimony out? Because it's likely to be reliable, it

1 seems like to me.

2 MR. HATFIELD: Me too. It's just that I'm
3 entitled to cross-examine someone about what these pictures
4 are.

5 COMMISSIONER ILES: I agree.

6 MR. HATFIELD: And I don't have a witness to do
7 that with.

8 COMMISSIONER ILES: Okay.

9 MR. HATFIELD: So it is not fair to cut through it
10 all to allow the witness to tell you what they are. I
11 mean, if you look at Exhibit A, Page 3, it's a picture of a
12 Ram truck with a license plate on the front of it.

13 COMMISSIONER ILES: Yes.

14 MR. HATFIELD: I don't want to voir dire the
15 witness. She has no idea where that truck is, whose it is,
16 what it has to do with this Case.

17 COMMISSIONER ILES: I would imagine she would tell
18 you what she was told about those pictures.

19 MR. HATFIELD: Exactly. So I'm entitled to
20 cross-examine someone about -- if someone is going to
21 testify, what is this, what does it show, where was it
22 taken, etcetera, and they don't know -- they haven't seen
23 your dog, as you put it, which I thought was perfect --
24 then I'm -- then I can't cross-examine them on it. So if
25 she gets up here and says, well, this is a picture of the

1 facility, but she doesn't know, and I can't ask her about
2 it.

3 COMMISSIONER ILES: Do you have a response?

4 MR. DOUGLASS: Thank you, Commissioner.

5 Two things: One, we are less than two weeks from the
6 filing of the complaint in this case, right? We are doing
7 everything we possibly can to provide the Commission with
8 evidence to decide the emergency motion for stay, which we
9 did not contest hearing today.

10 If Mr. Hatfield wants someone to testify
11 firsthand, I can put Mr. Maritz on the stand. I'm sure
12 he's familiar with what his server looked like two weeks
13 ago. And we can discuss whether or not this is an accurate
14 representation of where the server used to be. That seems
15 to me like a waste of time.

16 But we did not edit the photos. I put in every
17 photo I had because I didn't want to be accused of cherry-
18 picking and withholding evidence. So, insofar as we have a
19 dilemma today, it is driven by the necessity to present
20 evidence, even two weeks before our answer is due. I would
21 ask for some leeway in directing the witness.

22 COMMISSIONER ILES: Why don't we take a little
23 break and let me figure this out, and then we will come
24 back in five minutes?

25 MR. DOUGLASS: Thank you.

1 MR. HATFIELD: Thank you, Commissioner.

2 (A recess was taken.)

3 COMMISSIONER ILES: We're back on the record. And
4 what I have before me right now is an objection to the
5 testimony of Ms. Kirkweg answering questions about the
6 pictures in Exhibit A. And I am going to allow the
7 testimony, but I am not ruling on the objection. I will
8 take the objection with the case. And you can brief me on
9 it if you want. But we're going to see what the testimony
10 is, in the meanwhile.

11 MR. HATFIELD: Quite Solomon like. Thank you.

12 COMMISSIONER ILES: I hope it won't take too long.

13 MR. DOUGLASS: It will not.

14 BY MR. DOUGLASS:

15 Q Ms. Kirkweg, we were on Exhibit B. Do you have
16 that in front of you?

17 A I do.

18 COMMISSIONER ILES: Okay. Let me just say, then,
19 I thought we were on A. So we're on Exhibit B?

20 MR. DOUGLASS: Oh, I'm sorry. Maybe I --

21 COMMISSIONER ILES: I thought the objection was on
22 Exhibit A. I thought that's where we were.

23 MR. HATFIELD: It's all the same.

24 COMMISSIONER ILES: Are we going to go through all
25 of them, A, B, and C?

1 MR. DOUGLASS: We are not going to go through all
2 of them, but I -- we had admitted A and B. So the
3 discussion, I think, is relevant to the usability of A and
4 B.

5 COMMISSIONER ILES: All right. C is not -- was
6 not admitted.

7 MR. DOUGLASS: C is not in play.

8 COMMISSIONER ILES: Okay. So B, you want to talk
9 about B now? Is that what you want to do?

10 MR. DOUGLASS: Yes.

11 COMMISSIONER ILES: And I assume you're going to
12 have the same objection?

13 MR. HATFIELD: Yes, Commissioner. So I'd just
14 like a standing objection to this witness testifying as to
15 what any of the photos in Exhibits A or B show. I
16 understand that you're going to allow the testimony and
17 take it with the case, but I maintain an objection.

18 COMMISSIONER ILES: Agreed. Understood, rather.
19 Not agreed.

20 MR. DOUGLASS: Thank you, Commissioner.

21 BY MR. DOUGLASS:

22 Q Ms. Kirkweg, we're on the very first picture of
23 Exhibit B. What is your understanding of what this picture
24 shows?

25 A My understanding is: this is the previous location

1 of Delta Extraction's security equipment.

2 Q Can you go to the second picture? Same thing?

3 A Yes.

4 Q If you go to -- skip the third picture. Go to the
5 fourth picture. What does this show?

6 A There are Metric tags on the ground. And if you
7 look closely, you can see Manufacturing 22's name on the
8 Metric tags.

9 Q Thank you.

10 Take a look at the next two photos. In your
11 affidavit, you reference the drone and the path of travel;
12 is that correct?

13 A Yes.

14 Q Is this a picture of the drone you were
15 referencing?

16 A It is.

17 Q What significance did DCR place on the targeted
18 theft of the security system?

19 A That that was the only product or the only thing
20 that was taken during this burglary.

21 Q And so why is that a concern now, for DCR?

22 A Because that was evidence we needed to work
23 through our ongoing investigation.

24 Q Is it your understanding the security system has
25 yet to be repaired?

1 A Correct.

2 Q Do you have an anticipation of when that might
3 happen?

4 A From information from the licensee, it would be at
5 the -- the week of August 21st.

6 Q Have you been asked to approve the security site
7 or the security company being on-site that week?

8 A Yes.

9 Q And have you made -- have you approved that?

10 A Yes.

11 Q Has DCR interacted with the Franklin County
12 Sheriff's Office about this, the servers?

13 A We have.

14 Q And what has DCR learned about that investigation?

15 A DCR has reviewed, you know, the information. And
16 it was reported that a department -- or, sorry. -- a
17 licensee representative noticed the broken window earlier
18 in the day, at approximately 2:00 or 2:30, and that there
19 was a report that it did not appear that product was stolen
20 from the facility, and also suspected a -- a licensee
21 representative suspected an employee of the facility to be
22 responsible for the theft, due to a state audit.

23 Q Could you turn to Exhibit G. What is Exhibit G?

24 A It is an email from Rachael Dunn.

25 Q If you turn to the second page, on that second-to-

1 last paragraph -- I think you heard Ms. Herndon read that
2 paragraph before, correct?

3 A That's correct.

4 Q It says: This act destroyed priceless equipment to
5 the Delta Extraction material and impeded this
6 investigation.

7 Is that correct?

8 A That's correct.

9 Q Do you agree that the -- not having these servers
10 has impeded the investigation?

11 A Yes.

12 Q The access logs are also no longer available; is
13 that correct?

14 A That is what I've been told.

15 Q You were here earlier when Mr. Maritz testified
16 that Delta Extraction had handed over the access logs on
17 August 4th, correct?

18 A Yes.

19 Q Does DCR have -- are those access logs usable?

20 A No, they are not.

21 Q Why not?

22 A They do not have the date and time information on
23 them. The area where the date and time is supposed to be
24 is just number signs.

25 Q And so, as of right now, we can't recover those

1 access logs unless the servers are recovered, correct?

2 A From my understanding.

3 Q You're aware that Delta Extraction is asking that
4 the immediate suspension be stayed, pending the outcome of
5 this case?

6 A Yes.

7 Q What are DCR's concerns about permitting Delta
8 Extraction to resume operation while it challenges the
9 immediate suspension?

10 A And I have more information in my affidavit. But
11 the licensee that is -- you know, we have Metrc information
12 that has been put in correctly and potential inversion, and
13 it is the same operators that we -- that they have had that
14 is going to continue to operate. And so there are concerns
15 that the licensee, with the same operators and the same
16 procedures, are going to continue to operate in the same
17 manner.

18 Q Were you aware that Delta Extraction and Conte are
19 no longer doing business together?

20 A No, I was not.

21 Q Was today the first time you had been told that?

22 A Yes.

23 Q How frequent is your contact with Ms. Herndon?

24 A The Division's or mine, personally?

25 Q Either/or.

1 A So I have been communicating with her, with the
2 suspension. But I'm not -- I cannot speak to how often our
3 staff speak with a licensee. It would just be dependent on
4 the types of issues or questions, things that come up.

5 Q At any time during your personal communications,
6 has Delta Extraction indicated that they intend to continue
7 to sell products that have THC that is derived from THC-A?

8 A No.

9 Q Was today the first time you had heard that?

10 A Sorry. Can you repeat that?

11 Q Sure. I'll try. At any time have you been told
12 by Delta Extraction that they intend to continue to sell
13 distillate that is derived from THC-A-based THC?

14 A No.

15 Q Is that a problem?

16 A Yes.

17 Q Why?

18 A It is outlined in our rules and has been outlined
19 in our rules in Article XIV that that is not prohibited;
20 it's illegal.

21 Q You said not prohibited. Did you mean it is
22 prohibited?

23 A I'm sorry. Not permitted, yes.

24 MR. DOUGLASS: Okay. Thank you. That's all I
25 have.

1 COMMISSIONER ILES: Mr. Hatfield, cross.

2 MR. HATFIELD: Thank you, Commissioner.

3 CROSS-EXAMINATION BY MR. HATFIELD:

4 Q So, when you were there on August 2nd, -- you,
5 meaning other people in the Division, not you personally,
6 right -- the representatives of Delta Extraction offered to
7 just give you the servers, didn't they?

8 A I'm not sure.

9 Q Because you weren't there?

10 A Correct.

11 Q All right. Why didn't you just take the servers?

12 A I can't speak to that.

13 Q Okay. Didn't take them on the 2nd, the 3rd, the
14 4th, the 5th, the 6th, right?

15 A We were working with the licensee to have a copy
16 of that -- of the electronic video monitoring.

17 Q Okay. And so, since you seem to know what's in
18 these pictures, looks pretty easy to grab the servers,
19 doesn't it?

20 A I would have to look at the before picture. I
21 said we looked through the after.

22 Q Okay. So you can't tell from the pictures, right?

23 A Right.

24 Q So, regarding the pictures, I'm not going to go
25 through them one by one. But there's a picture of a drone,

1 right?

2 A Yes.

3 Q And in your affidavit, you talk about the drone?

4 A Yes.

5 Q You can't tell this commissioner how that drone
6 got there, can you?

7 A No.

8 Q You don't know if somebody moved it from another
9 room and set it on that desk, in order to take a picture,
10 do you?

11 A That's correct.

12 Q You don't know. There's a picture, I think the
13 third one in, where there's a piece of glass, kind of
14 laying right on top of the desk. You don't know how that
15 piece of glass got there, do you?

16 A No.

17 Q Don't know whether somebody moved it there
18 specifically to take the picture, do you?

19 A Right.

20 Q The picture of the Metro tags on the floor, you
21 don't know how they got there, do you?

22 A No, right.

23 Q Somebody might have pulled them out of another
24 room and thrown them on the floor and then taken a picture,
25 right?

1 A Could potentially.

2 Q All right. So let's stay on the break-in for a
3 minute, and then we'll move to the other parts. I didn't
4 understand what you said about the reports, and it's
5 probably because I wasn't listening. Did I hear you saying
6 that you've reviewed some police reports?

7 A Yes.

8 Q And, in those police reports, the police have told
9 you that someone at Delta told them some things, right?

10 A That's correct.

11 Q And what the police told you that someone at Delta
12 told them, was that someone at Delta thinks that maybe
13 someone else at Delta stole the servers?

14 A It was reported to law enforcement that were on
15 scene, by whoever was with the facility, that they
16 suspected that someone from the -- an employee of the
17 facility took the equipment.

18 Q All right. Which Delta employee told the police
19 that?

20 A I am not for sure. It's in the police report.

21 Q The name is in the police report?

22 A Yes.

23 Q Okay.

24 A I think it is.

25 Q And do you have a copy of the police report?

1 A Right here with me now, I do not.

2 Q But does the Division have a copy?

3 A Yes.

4 Q Okay. And who stole the servers?

5 A I don't know.

6 Q Okay, all right. I'm going to kind of go

7 backwards in our testimony.

8 You talked about the first time you heard of them

9 not doing business with Conte. Have you ever asked Delta

10 whether they're going to continue to do business with

11 Conte, before today?

12 A Not to my knowledge.

13 Q Have you ever told them that you had problems with

14 the way that Conte product was being processed, before

15 today?

16 A Not to my knowledge.

17 Q Do you agree with the testimony you've heard today

18 that all of the issues you've identified have to do with

19 the Conte brand of production?

20 A No, I do not.

21 Q Okay. Which of the issues in your affidavit have

22 to do with anything other than Conte brand?

23 A I would have to look. I don't have the item names

24 identified. I only have package tags.

25 Q Go right ahead.

1 A I -- the information wouldn't be in here. The
2 information would be in Metrc that would be connected to
3 that package tag.

4 Q Okay. Well, let's make sure I got this right. So
5 Mr. Maritz has said that he's reviewed all of this and it
6 all has to do with the Conte product. And you told me that
7 you don't agree with that, right?

8 A I'm saying I cannot confirm that because I do not
9 have Metrc in front of me to say what the actual item name
10 is. And if I remember from the earlier testimony, he had
11 not looked into the particular tags that we had outlined.

12 Q All right. So you don't know one way or another
13 whether it's all Conte?

14 A Right.

15 Q All right, okay. So we started this when the
16 Commissioner asked for some information about THC versus
17 THC-A versus CBD?

18 A Yes.

19 Q And I want to approach this from a different
20 direction. You have talked about inversion. Your
21 affidavit talks about inversion?

22 A Yes.

23 Q I'm trying to find a definition of inversion in
24 your regs. Can you help us with where that is?

25 A Our regulation mentions inversion. It does not

1 have a specific definition within the -- our -- you know,
2 the opening section, 010.

3 Q Okay. In your affidavit, you talk a little bit
4 about the constitution, and I think maybe you even talk
5 about some statutes. But, I guess, can you help us all out
6 with how we find a definition of the word "inversion"
7 somewhere?

8 A So, in my affidavit, I have a definition of
9 inversion.

10 Q Yep. But -- yes. And I'm going to ask you about
11 that in just a minute. Can you help us with where we would
12 find some legal or regulatory definition of inversion?

13 A So, as you've said, it's not in our regulations.
14 So I guess, no, not on -- not right now, I cannot.

15 Q Okay. So you have in your own affidavit,
16 somewhere, 'cause I just marked it, a discussion of what
17 inversion is; is that right?

18 A That is correct.

19 Q Oh, Paragraph 9 --

20 A Yes.

21 Q -- right? Inversion occurs when cannabis seeds,
22 plants, or products made from them come into the regulatory
23 market from outside the system?

24 A Yes.

25 Q So, in all of the information we've been talking

1 about, we're not talking about cannabis seeds, right?

2 A Correct.

3 Q We're not talking about plants?

4 A Correct.

5 Q We're talking about products made from cannabis
6 seeds or plants?

7 A It also goes on to say that this happens in
8 several ways, including -- cannabis seeds, plants, or
9 products come from producers outside of Missouri's system
10 or when hemp-derived chemically-modified ("converted")
11 cannabinoids are added to products.

12 Q Right. So I want to ask about the first sentence
13 first. Inversion -- or it's actually the second sentence.
14 Inversion occurs when cannabis seeds, plants, or products
15 made from them come into the regulatory market from outside
16 the system.

17 Cannabis seeds and plants, different than hemp
18 seeds or plants, correct?

19 A I think that both could be -- hemp or marijuana is
20 -- would both be considered cannabis.

21 Q Okay. And help me -- where in the rule I can
22 figure that out.

23 A Where in the rule?

24 Q Yes, ma'am. It's Petitioner's 1. Let me withdraw
25 that question.

1 So, on Petitioner's 1, let's start with the
2 definition, definition sections. On Page 2 of
3 Petitioner's 1 -- or Page 3, sorry, there's a definition of
4 marijuana. Actually, it's 4. There's a definition of
5 marijuana in your rules, right?

6 A It's on Page 5.

7 Q Yes. Anyway, you're familiar with all your rules,
8 right?

9 A Yes.

10 Q In the definition of marijuana, it says that
11 marijuana does not include industrial hemp, right?

12 A Correct.

13 Q So we know that when the Department talks about
14 marijuana, they do not mean industrial hemp, right?

15 A Correct.

16 Q Okay. So on your affidavit, then, you pointed out
17 that -- the last sentence of Paragraph 9, you say: This
18 can happen in several ways, including when cannabis seeds,
19 plants, or products come from producers outside of
20 Missouri's system or when hemp-derived chemically-modified
21 ("converted") cannabinoids are added to products.

22 A So any THC that is in a marijuana product that is
23 in our seed-to-sale system is to come from licensed
24 cultivators within the State of Missouri.

25 Q So, when this product that we're talking about

1 came in, it was derived from hemp, correct?

2 A Assuming.

3 Q I mean, you don't have any reason to think that
4 the testimony we've heard today was wrong?

5 A Yeah.

6 MR. DOUGLASS: It calls for speculation.

7 BY MR. HATFIELD:

8 Q And I think you've already said it was THC-A,
9 which was not THC, right?

10 A It is THC-A, not THC. But any THC, including
11 THC-A, that is in a marijuana product, is to originate from
12 licensed cultivators within the State of Missouri.

13 Q But that's not what the rules have always said,
14 correct?

15 A We have clarified the rule to ensure the licensees
16 are aware of this, because it does say in Article XIV and
17 in our rules and in our rescinded rules that all marijuana
18 that's cultivated within the State of Missouri is to be --
19 is to originate from cultivated -- cultivation facilities
20 within our state.

21 Q And I'll tell you that I think you quoted it
22 accurately. It says all marijuana, right?

23 A It does.

24 Q And marijuana is -- and hemp is not marijuana. We
25 already covered that, right? According to your own rules,

1 hemp is not marijuana.

2 So you changed your rule to be effective
3 August 1st, right?

4 A We did not change our rule. We clarified our
5 rule.

6 Q So the words of the rule that was effective
7 July 31st are different than the words of the rule that is
8 effective August 1st?

9 A There is additional language in our rules from the
10 emergency rules to the final rules.

11 Q But not a change?

12 A Additional language.

13 Q Okay. And that additional language makes clear
14 that effective August 1st, THC-A should not be used in
15 creating products?

16 A Should be effective July 30th, that it's not
17 allowed per the -- per our regulations. On here it says
18 6/30/23. It is August 1st. But, yes, our final rules say
19 that all THC, all tetrahydrocannabinoid -- or cannabiniol,
20 such as THC-A, Delta-8, or Delta-10, in a marijuana product
21 manufactured by a manufacturing licensee shall only be
22 derived from marijuana cultivated in Missouri by a licensed
23 cultivator.

24 And I don't have the language of the emergency
25 rule in front of us, but I think that it did not have the

1 specific examples of THC-A, Delta-8, or Delta-10.

2 Q So just, when the Commissioner goes back and ties
3 all this together after this hearing, that rule you were
4 just quoting, you didn't change the definition of
5 marijuana; that still says that marijuana does not include
6 industrial hemp, correct?

7 A I am not for sure. I do think that the definition
8 may have changed or there was some information in the rule
9 about the three-tenths; so I can't completely speak to
10 that.

11 Q So -- and, I mean, this will --
12 Okay. While we're on the rules, you're familiar
13 with the processes the Department can use to suspend a
14 license, right?

15 A Yes.

16 Q And, if you want to suspend a license, you don't
17 have to do this immediate suspension that you did here,
18 right?

19 A There are two different types of suspensions, yes.

20 Q Yeah. And, in fact, the suspension rule, which
21 the Commissioner can read later, the non-immediate one
22 says: During the 30-day period, the licensee shall have
23 the opportunity to cure the deficiency listed in the notice
24 and/or respond to the allegations and submit records or
25 information demonstrating why the license should not be

1 revoked or suspended, right?

2 A That is correct.

3 Q And you chose not to allow the licensee to have
4 30 days to cure the deficiencies and respond, right?

5 A Due to the situation, we used the rules talking
6 about immediate -- talking about immediate suspension,
7 those qualifiers of a credible threat, such as from law
8 enforcement, that diversion or inversion of marijuana
9 product is occurring at the licensed facility.

10 So we have a credible report, backed up by our
11 Metric data; and so we go to immediate suspension to ensure
12 the public -- ensure the health of the public.

13 Q So the immediate suspension rule says that there
14 may be a suspension, including placing an administrative
15 hold on marijuana product until the threat has been
16 eliminated. How can we eliminate the threat here?

17 A We have not completed our investigation.

18 Q So, when the rule says that the suspension is
19 until the threat has been eliminated, we just have to wait
20 until you decide how to eliminate the threat?

21 A We have to look at everything that is going on, so
22 we can make a determination, see the full extent and the
23 scope of this issue.

24 Q So how long is it going to take?

25 A This is top priority for the Department.

1 Q So --

2 A I can't give a timeline. And, in addition, we
3 have crucial evidence that is now gone; so, you know, that
4 inhibits our investigation.

5 Q Right. So you can't tell us today what it is that
6 could be done to eliminate this imminent threat of public
7 safety?

8 A I cannot, because we are looking into the full
9 scope.

10 Q And now that we've -- through that, tell us just
11 one more time: What is the imminent threat to public
12 safety?

13 A There is two that have been outlined in the
14 immediate order of suspension for the licensee. And that
15 would be inversion and the testing. And I can go to the
16 regulation and read it exactly. It's also in our order of
17 suspension, in our conference call summary.

18 Q No. I've gotcha. But there's nothing, other than
19 what's in Petitioner's Exhibit 2, that constitutes an
20 imminent threat, right?

21 A Can you reword the question?

22 Q Sure. So Petitioner's Exhibit 2 is your order of
23 immediate suspension. I thought you were just referring to
24 that.

25 A Yes.

1 Q So I was just intending to tie the evidence
2 together and say that, when we're talking about an
3 immediate threat, all of your information about immediate
4 threat is contained in Exhibit 2?

5 A You're saying like the details of that
6 information?

7 Q Well, I would hope.

8 A So we have provided information. There is the
9 language from the rule talking about inversion and that the
10 licensee is permitting marijuana product to enter the
11 regulated market without being compliantly tested. But I'm
12 not sure exactly what you're trying to get at with your
13 question.

14 Q Just trying to figure out what the public should
15 be worried about.

16 A The public should be worried that there is product
17 that was inverted that may not have been grown in a
18 regulated setting, and our mandatory testing may not test
19 for the product -- for the contaminants that are within
20 your product.

21 Q Got it. I think we've covered that quite a bit.

22 MR. HATFIELD: No further questions.

23 COMMISSIONER ILES: Any redirect?

24 MR. DOUGLASS: Two questions. I'm sorry to ask
25 more questions.

1 REDIRECT EXAMINATION BY MR. DOUGLASS:

2 Q Conte, we've talked about Conte a lot today,
3 correct?

4 A Yes.

5 Q Conte is a marijuana product produced by Delta
6 Extractions, correct?

7 A Yes.

8 Q How they choose to staff that, what their contract
9 is with the out-of-state entity, Conte, that's their
10 business, correct?

11 A Yes. Everything that happens within a licensed
12 facility would be the responsibility of the licensee.

13 Q Is there any segmenting out responsibility for
14 products which may be a concern that were produced by
15 Conte's subcontracted staff, as opposed to the Delta
16 Extraction staff that are there Monday through Friday?

17 A I do not believe so. All staff should be trained
18 within the same SOPs, procedures, and things like that. So
19 I would say that they're all in the same --

20 Q And insofar as there is a problem with Conte
21 distillate and Conte behavior in the facility, that's Delta
22 Extraction's responsibility as the holder of MAN 22
23 license?

24 A It is.

25 MR. DOUGLASS: No further questions.

1 RE CROSS-EXAMINATION BY MR. HATFIELD:

2 Q So the imminent threat is inversion; and the
3 inversion was, the testimony is, the procedures to produce
4 Conte product. Do you agree?

5 A We are currently investigating the scope. So I
6 cannot say if it is solely Conte or if they are also the
7 Black Magic product brand --

8 Q Midwest.

9 A Midwest, sorry -- Midwest product brand that's
10 also impacted, because we have not completed our
11 investigation.

12 Q All right. Well, if these guys all told the truth
13 and all of the issues that you've identified had to do with
14 the Conte process and the Conte process has stopped, the
15 threat has been eliminated, right?

16 A I do not believe so, because in the testimony, you
17 guys continue -- you said that you were going to continue
18 to sell that product, even though it is against our
19 regulations, until the end of the year.

20 Q Okay. So product that was made -- if the
21 Commissioner finds that the rule allowed it before and it
22 was produced in compliance with your old rule before you
23 added words, your position is: you can sell product that
24 was legally produced then, but you can't sell it now?

25 A I do not believe that it was legal under emergency

1 rule.

2 Q Oh, I get that.

3 A Okay.

4 Q I get that. But we've got a dispute about that,
5 right?

6 A (The witness nodded her head.) So, what was --
7 Sorry. Can you repeat the question?

8 Q Well, in other words, if it got produced a year
9 ago, is it the Division's position, then, that -- and it
10 was legal -- Division's position it can't be sold?

11 A I mean --

12 MR. DOUGLASS: I'm going to object that it calls
13 for a legal conclusion.

14 MR. HATFIELD: I think the Commissioner has my
15 point. I withdraw my question.

16 COMMISSIONER ILES: I just wanted to let you know:
17 you are going to have an opportunity to file a brief. So,
18 probably, some of these things might be saved for that.

19 MR. HATFIELD: Absolutely. I have no further
20 questions of this witness.

21 MR. DOUGLASS: I have just another hour. No.

22 COMMISSIONER ILES: I thought you had one more
23 question.

24 MR. DOUGLASS: No, no. No more questions.

25 COMMISSIONER ILES: No more questions. And no

1 more with him? Are you resting, then?

2 MR. DOUGLASS: I am resting, yes. I will not call
3 Mr. Maritz to talk about the photos. So we have no further
4 evidence.

5 COMMISSIONER ILES: Okay.

6 MR. HATFIELD: Commissioner, would you like to
7 know the difference between CBD, THC-A, and THC, because I
8 have like a botanist?

9 COMMISSIONER ILES: Here right now?

10 MR. HATFIELD: Yes, ma'am.

11 COMMISSIONER ILES: Yes, I would.

12 Would you be okay with testimony on that? I mean,
13 I guess, he -- we didn't have to disclose witnesses
14 beforehand. It really doesn't matter if you object at this
15 point.

16 MR. DOUGLASS: Well, I would object insofar as
17 it's well outside the -- that legal issue is well outside
18 the scope of the emergency motion for stay.

19 COMMISSIONER ILES: So how is that a legal issue?

20 MR. DOUGLASS: So I believe it's going to be used
21 by Petitioner to try to argue that the rules allow certain
22 products, don't allow other products.

23 COMMISSIONER ILES: Right.

24 MR. DOUGLASS: The legal issue before us is
25 whether there was a credible threat on the date that the

1 imminent suspension issued, such that it can now be stayed.

2 COMMISSIONER ILES: Right.

3 MR. DOUGLASS: It would be highly prejudicial to
4 permit a scientific expert witness on these compounds at
5 this point.

6 COMMISSIONER ILES: Okay. Well, here's my
7 concern: So one of the -- I heard THC-A all the way
8 through. I learned that THC-A, when heated, becomes THC;
9 but I also learned that there was, when we had this
10 discrepancy in the weight, which was one of your big
11 examples of the inversion, that the reason for the
12 discrepancy was the addition of -- the testimony, as I
13 recall, was CBD oil.

14 MS. BRITTANY KIRKWEIG: Yeah. It's further in my
15 affidavit. But when it -- that example is saying 5 grams.
16 I apologize. I just put my --

17 COMMISSIONER ILES: No, I -- yeah, I know what
18 you're talking about.

19 MS. BRITTANY KIRKWEIG: So it said 5 grams --
20 5 grams of distillate, that was from the Tag 001, to create
21 130,000 grams of Conte distillate. In the licensee note in
22 the system, in the state-wide track and trace system, they
23 say that they mixed it with Conte CBC distillate. And so,
24 in their testimony, they were saying that it was converted
25 to THC from this Conte distillate; and so --

1 COMMISSIONER ILES: Which is CBD. What you just
2 read, you --

3 MS. BRITTANY KIRKWEIG: They say that it is mixed
4 with Conte CBD distillate. So I am unsure how they are
5 getting CBD distillate.

6 COMMISSIONER ILES: Well, I just thought, based on
7 the testimony, that it seemed like those terms were being
8 used interchangeably. I was just trying to understand what
9 the words meant, not the legal argument. I was just trying
10 to figure out: did he really mean to say CBD oil or did he
11 misspeak, I guess, really, is what I'm looking for. And
12 you think that's legal argument? If it is, you guys can
13 address it in your briefs.

14 MR. DOUGLASS: I believe that the issue for the
15 briefs is whether THC, which is derived from THC-A, which
16 is derived from an industrial hemp product, is prohibited
17 under our rules.

18 COMMISSIONER ILES: Right. But I thought the
19 industrial hemp product that you're talking about is CBD
20 oil. No?

21 MR. DOUGLASS: It can be, yes.

22 COMMISSIONER ILES: That's all I'm trying to
23 figure out. I mean, I think the testimony was kind of
24 unclear. It looks like we're all kind of confused here.
25 And I just thought if we had that fact clear in the record,

1 it might make the briefing more easy for you two. But if
2 you want to leave it murky, then you can address it in your
3 brief and explain it.

4 MR. HATFIELD: Commissioner, I'd rather not leave
5 anything murky for you. I have here a botanist, who I
6 could ask: Tell me if you're a botanist -- generally,
7 right? And then please answer the Commissioner's question.

8 COMMISSIONER ILES: And you're going to object to
9 that?

10 MR. DOUGLASS: I would only object to the scope
11 of -- well.

12 COMMISSIONER ILES: Okay. If you're objecting,
13 I'm going to allow it for what it's worth, and I will take
14 the objection with the case. It seems like I said that
15 earlier; but all right. Here we go.

16 MR. HATFIELD: I call Adam Weiss.

17 (Witness sworn.)

18 ADAM WEISS, being sworn, testified as follows:

19 DIRECT EXAMINATION BY MR. HATFIELD:

20 Q Could you state and spell your name for the
21 record, please.

22 A Adam Weiss, A-D-A-M W-E-I-S-S.

23 Q And, Mr. Weiss, just for some context, what do you
24 do?

25 A I am Director of Extraction of the Midwest Magic

1 hydrocarbon extraction process.

2 Q At the Delta --

3 A At Delta facility.

4 Q And what is your educational and professional
5 background?

6 A Botany and ecology.

7 Q And have you -- do you have education in that?

8 A Oh, yeah, yeah. It's a bachelor's of science in
9 botany and ecology.

10 Q And you heard the Commissioner asking: THC, THC-A,
11 CBD?

12 A Right.

13 Q Can you answer, say yes or no?

14 A Yes.

15 Q Yes? Go for it.

16 A I'll start with marijuana plant growing for -- in
17 Missouri, growing for -- in a licensed facility, will grow
18 THC-A. So, when you buy flower, if we buy flower, it will
19 contain THC-A and not THC. If, when -- after we process
20 it, in the hydrocarbon processing, it is still THC-A. It
21 requires heating in order to convert it from THC-A into
22 THC.

23 And so industrial hemp is a different plant. Most
24 industrial hemp is CBD. Some industrial hemp is CBG.
25 These cannabinoids that are not psychoactive. THC is the

1 only psychoactive one we're talking about.

2 And so CBD is a cannabinoid that is not psycho-
3 active but has therapeutic properties that can -- you know,
4 for relaxation and anti-inflammation and such things, but
5 it is -- it does not cause a head change.

6 Q All right. Let the Commissioner ask. But, just
7 to be clear, so C-- I can go down to, I think, Schnucks and
8 buy CBD, right?

9 A Yes. Gas stations, grocery stores.

10 Q And that's coming from what plant?

11 A Industrial hemp.

12 Q Industrial hemp.

13 MR. HATFIELD: And, Commissioner, back to you.
14 I'm done. That's all I have.

15 COMMISSIONER ILES: But can the CBD be converted
16 into THC?

17 THE WITNESS: Yes, it can.

18 COMMISSIONER ILES: And how do you do that?

19 THE WITNESS: I don't specifically know how to do
20 that. I know it can be done.

21 COMMISSIONER ILES: Okay.

22 MR. HATFIELD: So the stuff I buy at Schnucks I
23 can turn into a psycho --

24 THE WITNESS: With some chemistry, yes.

25 MR. HATFIELD: All right. That's all I have. I

1 don't know exactly where we are.

2 COMMISSIONER ILES: You may cross-examine,
3 Mr. Douglass, if you choose.

4 MR. DOUGLASS: This could take all day. I don't
5 think I have any questions in follow-up to the
6 Commissioner's question to the witness.

7 COMMISSIONER ILES: You're excused.
8 (Witness excused.)

9 MR. HATFIELD: I don't have any further rebuttal
10 for Petitioner, Commissioner.

11 COMMISSIONER ILES: Okay. Is there any further
12 evidence to be presented today? Okay. Why don't we go off
13 the record and talk about a briefing schedule.

14 (Discussion off the record.)

15 (The stay hearing was ended.)

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1 C E R T I F I C A T E
2 STATE OF MISSOURI }
3 COUNTY OF COLE } SS
4 I, Ginger R. Sommerer, CCR, Registered
5 Professional Reporter, and a Notary Public in and for the
6 State of Missouri, do hereby certify that I am employed by
7 the Administrative Hearing Commission of the State of
8 Missouri to record verbatim, by machine shorthand, the
9 proceedings herein and thereby am the official reporter for
10 the Commission in this matter, that I was personally
11 present at said hearing and reported said proceedings, and
12 the machine shorthand notes so made at the time and place
13 mentioned on the title page hereof were transcribed under
14 my direction and supervision by means of computer-aided
15 transcription, and that the foregoing pages constitute a
16 true, complete, and accurate transcript of the tape
17 recording and my said machine shorthand notes.

18 Witness my hand and seal this 18th day of
19 August 2023.

20 My Commission expires July 24, 2025.

21
22 Ginger R. Sommerer, CCR, RPR
23 Notary Public, State of Missouri
24 Commissioned in Cole County
25