

1	<p>1 IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO</p> <p>2</p> <p>3 ETP RIO RANCHO PARK, LLC, an Arizona Limited Liability Company;</p> <p>4 FAC-ABQ, LLC, a New Mexico Limited Liability Company;</p> <p>5 JUNGLE JAM, LLC, a New Mexico Limited Liability Company; and</p> <p>6 DUKE CITY JUMP, LLC, a New Mexico Limited Liability Company</p> <p>7</p> <p style="text-align: center;">Plaintiffs,</p> <p>8</p> <p>9 vs. Case No. 1:21-CV-00092 JB/KK</p> <p>10</p> <p>11 MICHELLE LUJAN GRISHAM, in her official capacity as Governor of the State of New Mexico,</p> <p>12</p> <p>13 TRACIE C. COLLINS, M.D., in her official capacity as Secretary-Designate for the New Mexico Department of Health,</p> <p>14</p> <p>15 TIM Q. JOHNSON, in his official capacity as Acting Cabinet Secretary for the New Mexico Department of Public Safety,</p> <p>16</p> <p style="text-align: center;">Defendants.</p> <p>17 ZOOM VIDEO CONFERENCE VIDEOTAPED DEPOSITION OF TRACIE C. COLLINS, M.D.</p> <p>18</p> <p style="text-align: center;">February 19, 2021 2:30 p.m. to 5:45 p.m. Albuquerque, New Mexico</p> <p>19</p> <p>20 PURSUANT TO THE FEDERAL RULES OF CIVIL PROCEDURE, this deposition was:</p> <p>21</p> <p>22 TAKEN BY: PATRICK J. ROGERS, ESQ. ATTORNEY FOR PLAINTIFFS</p> <p>23</p> <p>24</p> <p>25</p>	3
2	<p>1 REPORTED BY: Theresa E. DuBois, RPR, NM CCR #29 Albuquerque Court Reporting Service, LLC P.O. Box 56787 Albuquerque, New Mexico 87187</p> <p>2</p> <p style="text-align: center;">A P P E A R A N C E S</p> <p>3</p> <p>4 For the Plaintiffs:</p> <p>5 PATRICK J. ROGERS, ESQ. PATRICK J. ROGERS, LLC 20 First Plaza Center, Northwest Suite 725 Albuquerque, New Mexico 87102 (505)938-3335 patrogers@patrogerslaw.com</p> <p>6</p> <p>7 and</p> <p>8 ANGELO J. ARTUSO, ESQ. LAW OFFICE OF ANGELO J. ARTUSO P.O. Box 51763 Albuquerque, New Mexico 87181-1763 (505)306-5063 angelo@mmliberty.com</p> <p>9</p> <p>10 For the Defendants:</p> <p>11</p> <p>12 MARIA S. DUDLEY, ESQ., and KYLE P. DUFFY, ESQ., and HOLLY AGAJANIAN, ESQ. OFFICE OF THE GOVERNOR 490 Old Santa Fe, Suite 400 Santa Fe, New Mexico 87501 (505)476-2210 maria.dudley@state.nm.us kyle.duffy@state.nm.us holly.agajanian@state.nm.us</p> <p>13</p> <p>14 Also Present:</p> <p>15 ALEX POLI, CLVS MOIR LITIGATION VIDEO</p> <p>16</p> <p>17 TAMARA PORTNOY EMILY MILLANES AMANDA WILLIAMS ROB and MELISSA GENETS</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	4
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Tracie C. Collins, M.D.
2/19/2021

ETP Rio Rancho Park, LLC, et al vs. Lujan Grisham, et al

<p style="text-align: right;">5</p> <p>1 VIDEOPHOTOGRAPHER: We are now on the record. 2 Today is Friday, February 19th, 2021. The time is 3 2:30 p.m. The videographer is Alex Poli, of Moir 4 Litigation Video, located in Albuquerque, New Mexico. The 5 court reporter is Theresa DuBois, of Albuquerque Court 6 Reporting Service. 7 We are here for the deposition of Secretary 8 Tracie C. Collins, M.D., in the case of ETP Rio Rancho 9 Park, LLC, et al., versus Michelle Lujan Grisham, et al. 10 Filed in the United States District Court for the District 11 of New Mexico. Case No. 1:21-CV-00092 JB/KK. This 12 deposition is being held via Zoom Video Conferencing. 13 Counsel will please state their appearances and 14 stipulate to the witness being sworn in remotely. 15 MR. ROGERS: Good afternoon. My name is Pat 16 Rogers, I represent the plaintiffs and I stipulate to the 17 deposition being taken remotely. 18 MS. DUDLEY: Good afternoon. My name is 19 Maria Dudley. And present with me are my colleagues Holly 20 Agajanian and Kyle Duffy. We represent the defendants in 21 this matter, including Secretary Collins. We also 22 stipulate to the witness being sworn in remotely. Thank 23 you. 24 TRACIE C. COLLINS, M.D., 25 having been first duly sworn, testified as follows:</p>	<p style="text-align: right;">7</p> <p>1 send or receive any texts, emails or messages from anyone 2 involved in this lawsuit during this deposition. Would 3 you agree to that, Dr. Collins? 4 A. Yes. 5 Q. What did you do to prepare? 6 A. So, to prepare, I met with the attorneys to 7 discuss the case. 8 Q. Did you review any documents? 9 A. I received an email with documents that I had a 10 chance to skim. I've been going since about 6 this 11 morning so I did receive documents, but limited time to 12 review. 13 Q. Do you remember any of the documents that were 14 sent to you? 15 A. No, I do not. 16 Q. Have you had the chance to talk to Dr. Smelser 17 about his deposition in the DOH administrative proceeding? 18 A. No, I have not. 19 Q. When is the first time that you were informed 20 there was a dispute or an issue with regard to trampoline 21 gyms or trampoline companies? 22 A. It was about three weeks ago. 23 Q. And I don't mean to inquire about information you 24 received from any of your attorneys, but who was that 25 conversation with?</p>
<p style="text-align: right;">6</p> <p>1 EXAMINATION 2 BY MR. ROGERS: 3 Q. Madam Secretary, my name is Pat Rogers, I 4 represent the plaintiffs. And I would like to know, would 5 you prefer to be -- that I refer to you as "Madam 6 Secretary" or "Dr. Collins?" What is your preference? 7 A. Dr. Collins will suffice. Thank you. 8 Q. Dr. Collins, have you been deposed previously? 9 A. No. 10 Q. I'm sure your attorney -- I'm sure your attorneys 11 have met with you and prepared you properly, but let me 12 discuss just a few of the usual rules. If I ask a 13 question that you do not understand, would you ask me to 14 rephrase it? 15 A. Yes. 16 Q. And the answers have to be verbal. And you 17 understand that? 18 A. I do. 19 Q. And if I cut you off and you're not finished, 20 would you make sure to let me know so that you can finish? 21 A. Yes. 22 Q. And if -- and if -- and at any time if you need a 23 break just let us know, including your -- including your 24 important matter this afternoon. I'd like to ask about an 25 honor system here; if you would agree that you would not</p>	<p style="text-align: right;">8</p> <p>1 A. That was with a Billy Jimenez. 2 Q. And what did he tell you? 3 A. There's a lawsuit. 4 Q. Did he tell you anything else? 5 A. He didn't even -- 6 MS. DUDLEY: Objection, seeks privilege -- 7 privileged information. Mr. Jimenez is now general 8 counsel for the Department of Health. I'll instruct the 9 witness not to answer. 10 Q. (BY MR. ROGERS) Other than Mr. Jimenez, did you 11 discuss the issue of trampoline gyms with anyone? 12 A. There was one conversation I had with a member of 13 DOH when there were concerns, maybe a month ago, with 14 trampolines and safety. 15 Q. And was that DOH employee an attorney? 16 A. No. 17 Q. And who was that? 18 A. Jason Cornwell. 19 Q. And what did Mr. Cornwell tell you? 20 A. I'm just pausing to remember. He basically said 21 there were concerns about our orders and their impact on 22 the trampoline businesses. 23 Q. Do you remember anything else from that 24 conversation? 25 A. Unfortunately, I do not.</p>

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9	<p>1 Q. And who is Dr. Smelser?</p> <p>2 A. Do you have a first name?</p> <p>3 Q. Chad B. Smelser. My understanding is that he is</p> <p>4 deputy chief epidemiologist, bureau chief for infectious</p> <p>5 disease, epidemiology bureau. Does that help you place</p> <p>6 him?</p> <p>7 A. Yes, that's correct.</p> <p>8 Q. Okay. And he testified in the administrative</p> <p>9 proceeding and I want to read this to you. I asked him:</p> <p>10 "Will you consider putting trampoline companies in the</p> <p>11 same category as close-contact businesses with gyms and</p> <p>12 group fitness exercises and so on? Will you do that,</p> <p>13 sir"?</p> <p>14 And he answered "Yes."</p> <p>15 And I said, "Will you do that quickly because</p> <p>16 every day they're out of business is one day closer to</p> <p>17 when they will never be able to open the business." And</p> <p>18 he said "Yes."</p> <p>19 To your understanding, no one in state government</p> <p>20 is considering putting trampoline companies in the same</p> <p>21 category as close-contact businesses, correct?</p> <p>22 MS. DUDLEY: Objection, seeks confidential</p> <p>23 and privileged information protected by executive</p> <p>24 privilege. I'm going to instruct the witness not to</p> <p>25 answer.</p>	11	<p>1 A. No, I'm not.</p> <p>2 Q. Dr. Scrace provided an affidavit in one of these</p> <p>3 cases and he said -- he was talking about the novelty of</p> <p>4 the Corona virus problem. He said, "We are, therefore,</p> <p>5 required to use whatever data and experiences in other</p> <p>6 states and countries that is available to make the best</p> <p>7 decisions that we can." Does that make sense to you?</p> <p>8 A. It has relevance.</p> <p>9 Q. So data and experiences from other states is</p> <p>10 something that should be considered?</p> <p>11 A. It's something that can be considered.</p> <p>12 Q. Should it be considered?</p> <p>13 A. I think it can be considered. I wouldn't use the</p> <p>14 word "should."</p> <p>15 Q. Okay. Are you aware that no other state has</p> <p>16 prohibited trampolining?</p> <p>17 MS. DUDLEY: Objection, foundation.</p> <p>18 You can answer, if you can, Dr. Collins.</p> <p>19 A. I don't know.</p> <p>20 Q. (BY MR. ROGERS) Would that matter to your</p> <p>21 decision, as to where it's appropriate to place trampoline</p> <p>22 gyms in the -- in the definitions in the public health</p> <p>23 orders, that no other state has prohibited trampoline</p> <p>24 gyms?</p> <p>25 MS. DUDLEY: Objection, form.</p>
10	<p>1 Q. (BY MR. ROGERS) Have you had a conversation with</p> <p>2 anyone outside of the governor's office concerning --</p> <p>3 concerning Dr. Smelser's commitment to review the</p> <p>4 situation and promptly address the possibility that</p> <p>5 trampoline gyms would be classified as close-contact</p> <p>6 businesses?</p> <p>7 A. No, I have not.</p> <p>8 Q. And that's not something that you're considering</p> <p>9 at this point in time, I take it?</p> <p>10 MS. DUDLEY: Objection, seeks privileged</p> <p>11 information protected by executive privilege.</p> <p>12 And I'm sorry, I'll also instruct the witness not</p> <p>13 to answer.</p> <p>14 Q. (BY MR. ROGERS) Okay. Dr. Smelser testified</p> <p>15 that the -- that the public health orders in New Mexico</p> <p>16 are the most strict orders in the nation. Do you agree</p> <p>17 with that?</p> <p>18 MS. DUDLEY: Objection, foundation.</p> <p>19 Q. (BY MR. ROGERS) You may answer, Doctor.</p> <p>20 A. I don't know that I'd say that they're the most</p> <p>21 strict in the nation. I think compared to neighboring</p> <p>22 states they are restrictive.</p> <p>23 Q. Are you aware of any analysis of the other</p> <p>24 state's orders that would address this issue, as to the</p> <p>25 most restrictive public health orders in the nation?</p>	12	<p>1 You can answer, if you can, Dr. Collins.</p> <p>2 A. What I'd like to share is that New Mexico is New</p> <p>3 Mexico and while there could be Dr. Scrace referencing</p> <p>4 other states, which likely predates my tenure, we have to</p> <p>5 think about New Mexico and what are the issues specific to</p> <p>6 this state as we make decisions about keeping New Mexicans</p> <p>7 healthy and safe.</p> <p>8 Q. (BY MR. ROGERS) And Dr. Collins, the answer to</p> <p>9 my question? Don't you agree that it's appropriate to</p> <p>10 consider what experts in 49 other states have decided with</p> <p>11 regard --</p> <p>12 MS. DUDLEY: Objection --</p> <p>13 Q. (BY MR. ROGERS) -- with regard to trampoline</p> <p>14 gyms?</p> <p>15 MS. DUDLEY: Objection, form.</p> <p>16 Dr. Collins, when I object, you can go ahead and</p> <p>17 answer unless I instruct you not to. Okay? So, please go</p> <p>18 ahead and answer if you can.</p> <p>19 THE WITNESS: Okay.</p> <p>20 A. Could you rephrase the question?</p> <p>21 Q. (BY MR. ROGERS) Yes. Don't you think it's</p> <p>22 important to evaluate and consider the fact that 49 other</p> <p>23 states, and 49 -- and presumably 49 other states with</p> <p>24 experts just like New Mexico, have determined that it's</p> <p>25 not necessary to prohibit trampoline gyms?</p>

13	<p>1 MS. DUDLEY: Objection, form.</p> <p>2 A. You can --</p> <p>3 MS. DUDLEY: Objection, form.</p> <p>4 Go ahead, Doctor.</p> <p>5 A. You can consider that information but you also</p> <p>6 need to look at national guidance and also literature.</p> <p>7 Q. (BY MR. ROGERS) Okay. What literature suggests</p> <p>8 to you that trampoline gyms should not be allowed to</p> <p>9 operate with the same restrictions, for example, as gyms?</p> <p>10 A. So when you consider literature, what we have</p> <p>11 available is regarding the pandemic itself. There is no</p> <p>12 specific data that I'm aware of about trampolines.</p> <p>13 Q. Would you agree that as far as you know, that the</p> <p>14 risk of a COVID transmission or infection in a trampoline</p> <p>15 company is certainly no greater than the same risk at a</p> <p>16 gym?</p> <p>17 MS. DUDLEY: Objection, foundation and form.</p> <p>18 A. I would not agree. I would look at the situation</p> <p>19 of can you keep a mask on, can you socially distance. And</p> <p>20 so those are two of the three best practices we have.</p> <p>21 Q. (BY MR. ROGERS) What would lead you to believe</p> <p>22 that you can't do those at a trampoline gym and you can do</p> <p>23 them at a gym?</p> <p>24 A. Because in jumping up on a trampoline, it is hard</p> <p>25 to keep a mask in place. Having students -- or excuse</p>	15	<p>1 Was it over 70 percent and under 80?</p> <p>2 A. I do not remember approximately.</p> <p>3 Q. You don't remember -- you don't remember any</p> <p>4 number whatsoever?</p> <p>5 A. I do not.</p> <p>6 Q. Today it's considerably less, correct?</p> <p>7 A. Yes.</p> <p>8 Q. Do you have a sense of the magnitude: half,</p> <p>9 quarter, 33 percent?</p> <p>10 A. I have not done those calculations, I don't have</p> <p>11 that number.</p> <p>12 Q. So if the public health orders were designed to</p> <p>13 address that potential problem, of being overwhelmed,</p> <p>14 right now that isn't a significant problem, is it?</p> <p>15 MS. DUDLEY: Objection, form.</p> <p>16 A. Overwhelming the healthcare system is not a</p> <p>17 problem as of today.</p> <p>18 Q. (BY MR. ROGERS) Okay. And it's a question a</p> <p>19 little bit off track, but it's been on my mind for some</p> <p>20 time. A lot of times when there are reports about the</p> <p>21 COVID patients being treated in New Mexico, there's a</p> <p>22 reference to nonresidents being treated here. Are those</p> <p>23 nonresidents people who contracted COVID outside of New</p> <p>24 Mexico and were transported to New Mexico?</p> <p>25 A. I'm sorry, I cannot answer that question.</p>
14	<p>1 me -- having children run around, it's hard to maintain</p> <p>2 the social distancing.</p> <p>3 Q. Are you aware of any study to support those</p> <p>4 opinions?</p> <p>5 A. I'm aware of the recommendations of the social</p> <p>6 distancing, mask wearing and hand washing, but not</p> <p>7 specific to trampoline parks, no publications.</p> <p>8 Q. Have you conducted any impairments on masks and</p> <p>9 jumping?</p> <p>10 A. No, I have not.</p> <p>11 Q. I had the occasion to listen in to at least parts</p> <p>12 of the Senate Rules Committee Hearing this morning. I</p> <p>13 want to make sure I heard you on a couple of points. I</p> <p>14 understood you to say that the public health orders were</p> <p>15 based in large part on the concern that New Mexico's</p> <p>16 healthcare facilities could have been overwhelmed. Am I</p> <p>17 remembering correctly that was your testimony this</p> <p>18 morning?</p> <p>19 A. That's correct.</p> <p>20 Q. And what was the peak of the beds that were being</p> <p>21 used to address COVID? What was the peak, 70-something</p> <p>22 percent?</p> <p>23 MS. DUDLEY: Foundation.</p> <p>24 A. I don't remember the exact peak number.</p> <p>25 Q. (BY MR. ROGERS) Do you remember approximately?</p>	16	<p>1 Q. Okay. You understand what I'm asking, though?</p> <p>2 A. Uh-huh.</p> <p>3 Q. There's a number out there that someone has,</p> <p>4 right?</p> <p>5 A. I understand your question, it's just I don't</p> <p>6 have that data in front of me.</p> <p>7 Q. Okay. Or, alternatively, is it -- were they New</p> <p>8 Mexico residents who contracted COVID outside of New</p> <p>9 Mexico and were transferred to New Mexico?</p> <p>10 A. I don't have that data in front of me.</p> <p>11 Q. Okay. So our state may be providing beds for</p> <p>12 persons who are not residents and did not contract COVID</p> <p>13 in New Mexico; is that correct?</p> <p>14 MS. DUDLEY: Objection, foundation.</p> <p>15 A. Without the data in front of me it would be an</p> <p>16 assumption that it's correct.</p> <p>17 Q. (BY MR. ROGERS) Who would you ask for that data?</p> <p>18 A. I would ask the healthcare systems.</p> <p>19 Q. You said this morning, for the mental health of</p> <p>20 our kids it is time to work toward opening, but I think</p> <p>21 your context was talking about schools. Is that right?</p> <p>22 That -- that when you said for the mental health of our</p> <p>23 kids, it is time to work toward opening, were you just</p> <p>24 referring to schools or opening up, for instance, exercise</p> <p>25 to kids?</p>

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17	<p>1 MS. DUDLEY: Objection, form.</p> <p>2 A. Yes, I was referring to schools.</p> <p>3 Q. (BY MR. ROGERS) Do you agree it would be a good</p> <p>4 thing to find ways to get kids more exercise during the</p> <p>5 COVID pandemic?</p> <p>6 MS. DUDLEY: Objection, form.</p> <p>7 A. I agree that it's a good idea to get kids back in</p> <p>8 school and to the extent that they can remain out doors</p> <p>9 and distance, it's good to get them exercising.</p> <p>10 Q. (BY MR. ROGERS) You don't think there's any form</p> <p>11 of indoor exercise that is good for kids?</p> <p>12 MS. DUDLEY: Objection, form, foundation.</p> <p>13 A. I do not agree at this time.</p> <p>14 Q. (BY MR. ROGERS) Let me make sure I understand</p> <p>15 you. So -- so you believe it is not safe for kids to</p> <p>16 exercise indoor with masks and social distancing and so</p> <p>17 on; is that correct?</p> <p>18 A. I don't --</p> <p>19 MS. DUDLEY: Objection, form.</p> <p>20 A. I'm concerned that we don't have an option to</p> <p>21 offer that as of today and so that is what I'm concerned</p> <p>22 about.</p> <p>23 Q. (BY MR. ROGERS) So it's your understanding that</p> <p>24 kids are not exercising indoors at a number of different</p> <p>25 facilities: Ninja gyms, tumbling academies and so on?</p>	19	<p>1 Q. Okay. And if they socially distance and wear</p> <p>2 their masks, then the risks have been considered and those</p> <p>3 activities are allowed, correct?</p> <p>4 A. Correct.</p> <p>5 MS. DUDLEY: Objection, form.</p> <p>6 Q. (BY MR. ROGERS) Do you know how you social</p> <p>7 distance playing basketball?</p> <p>8 A. Perhaps you can tell me.</p> <p>9 Q. You can't do it.</p> <p>10 Do you know how you social distance -- do you</p> <p>11 know how that professional soccer team social distances?</p> <p>12 A. I've not actually considered that question.</p> <p>13 You'll have to either rephrase it or I can't answer it.</p> <p>14 Q. Well, do you understand that the state has</p> <p>15 provided an exception for the professional soccer team to</p> <p>16 practice, right?</p> <p>17 A. Correct.</p> <p>18 Q. Was that your decision?</p> <p>19 MS. DUDLEY: Objection, seeks privileged</p> <p>20 information protected by executive privilege.</p> <p>21 MR. ROGERS: No, I don't think so. It's --</p> <p>22 it's -- the question to Dr. Collins is, is her authority</p> <p>23 and in her decision making capacity. And if she didn't</p> <p>24 make the decision, that's fine, but if she did, she's got</p> <p>25 to state it.</p>
18	<p>1 You don't understand that that's going on right now?</p> <p>2 MS. DUDLEY: Objection, form, foundation.</p> <p>3 A. It's not that I don't understand. I'm looking at</p> <p>4 it from the lens of the public health and what's safe, and</p> <p>5 the safest exercise would be outdoors with distancing. If</p> <p>6 they're up to other activities, I am not commenting on</p> <p>7 that.</p> <p>8 Q. (BY MR. ROGERS) I'm having a little bit of</p> <p>9 trouble following you. I don't know if you're saying it's</p> <p>10 a bad idea, but I know it goes on, or if you're saying</p> <p>11 tumbling and Ninja activities and a collection of indoor</p> <p>12 exercise for kids is prohibited at this time?</p> <p>13 MS. DUDLEY: Objection, form.</p> <p>14 A. Could you rephrase the question?</p> <p>15 Q. (BY MR. ROGERS) Yeah, that was a little bit</p> <p>16 difficult. I'm not sure I understand what you've said.</p> <p>17 Do you understand that kids are now indoors and</p> <p>18 exercising? They're playing -- they can play basketball,</p> <p>19 they can swim, they can go to a Ninja park. They can --</p> <p>20 they can go to tumbling, they can go to gymnastics? Do</p> <p>21 you understand that, Dr. Collins, under -- under your</p> <p>22 current public health order?</p> <p>23 A. I understand that if they can socially distance</p> <p>24 and wear their masks, that, yes, they can engage in those</p> <p>25 activities.</p>	20	<p>1 MS. DUDLEY: Thank you for clarifying,</p> <p>2 Mr. Rogers. I'll withdraw the objection for this</p> <p>3 question.</p> <p>4 A. Can you clarify the date when that decision was</p> <p>5 made?</p> <p>6 Q. (BY MR. ROGERS) Oh, two months ago,</p> <p>7 two-and-a-half months ago.</p> <p>8 A. So I'm going to have to tell you that predates me</p> <p>9 if it was two-and-a-half months ago.</p> <p>10 Q. Okay. Okay. Who is it, to your knowledge, now</p> <p>11 that is responsible for these decisions as to who is going</p> <p>12 to be allowed to conduct their business and who is not?</p> <p>13 How is that decision made?</p> <p>14 A. Can you provide more clarification or rephrase</p> <p>15 the question?</p> <p>16 Q. Yes. You're familiar with the definitions in</p> <p>17 your public health orders, right?</p> <p>18 A. Uh-huh.</p> <p>19 Q. Who is responsible for the verbiage in those</p> <p>20 public health orders?</p> <p>21 A. That is general counsel.</p> <p>22 Q. Okay. Are you involved in that at all?</p> <p>23 A. To the extent that I approve it, yes.</p> <p>24 Q. Okay.</p> <p>25 A. Yeah.</p>

Tracie C. Collins, M.D.
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ETP Rio Rancho Park, LLC, et al vs. Lujan Grisham, et al

<p style="text-align: right;">21</p> <p>1 Q. We'll get back to that.</p> <p>2 This morning, you indicated that one of the</p> <p>3 problems in New Mexico is a lack of public funding for</p> <p>4 public health. Did I get that correct?</p> <p>5 A. Not completely. It's a lack -- it's a problem</p> <p>6 throughout the country.</p> <p>7 Q. Okay. Because, actually, the funding for public</p> <p>8 health in New Mexico puts New Mexico in the top ten of the</p> <p>9 50 states, right?</p> <p>10 MS. DUDLEY: Objection, foundation.</p> <p>11 A. Not -- that's not correct.</p> <p>12 Q. (BY MR. ROGERS) Where -- where does New Mexico</p> <p>13 fall under the guidelines and studies of this factor?</p> <p>14 A. I'd have to look more explicitly at the data, but</p> <p>15 when I say it's not correct, our funding is not sufficient</p> <p>16 to sustain our activities.</p> <p>17 Q. Okay. So you're not disagreeing with the</p> <p>18 proposition that we may be in the top ten of states per</p> <p>19 capita for funding -- for public funding? You're stating</p> <p>20 that whatever it is, it's not enough?</p> <p>21 A. Correct.</p> <p>22 Q. Okay. You stated that "We will not redo the</p> <p>23 matrix." And I -- I think I understood you to mean that</p> <p>24 the green, yellow and red scheme was not going to be</p> <p>25 redone. Did I -- is that a correct understanding? Is</p>	<p style="text-align: right;">23</p> <p>1 Q. Okay. Wouldn't that be subsumed in the</p> <p>2 positivity calculation for each county?</p> <p>3 A. Positivity is based on cases divided by tests.</p> <p>4 Q. Okay.</p> <p>5 A. And then, when you look at cases by county,</p> <p>6 that's cases by number of people in a county.</p> <p>7 Q. Is there any positivity rate that would allow the</p> <p>8 state to open up certain or all of the close-contact</p> <p>9 recreational facilities that are now prohibited from</p> <p>10 opening?</p> <p>11 A. I don't have an absolute number for you today.</p> <p>12 We will have to evaluate moving forward, what trends we</p> <p>13 see in the cases.</p> <p>14 Q. Do you know any other state that does it this</p> <p>15 way, that -- that provides for openings if a positivity</p> <p>16 rate is below a certain figure?</p> <p>17 A. I do not know.</p> <p>18 Q. One of them would be California. And in</p> <p>19 California, if the positivity rate goes below 5 percent in</p> <p>20 any county, then trampoline gyms, among others, can open.</p> <p>21 California is considered to be the second-most restrictive</p> <p>22 state with regard to trampolining.</p> <p>23 Would that be a good figure to shoot for and to</p> <p>24 allow trampoline gyms or companies to open when the</p> <p>25 positivity rate in a county went below 5 percent?</p>
<p style="text-align: right;">22</p> <p>1 that what you meant by the "matrix"?</p> <p>2 MS. DUDLEY: Objection, form.</p> <p>3 A. So as of today we're not going to redo the</p> <p>4 matrix, but we could change how we approach things moving</p> <p>5 forward as we look at what goes on in the state with</p> <p>6 COVID.</p> <p>7 Q. (BY MR. ROGERS) And one of the things that you</p> <p>8 mentioned was the positivity rate, that that would be a</p> <p>9 significant factor in possible changes; is that correct?</p> <p>10 A. That could be one of the matrix, that's correct.</p> <p>11 Could be --</p> <p>12 Q. Anyone else --</p> <p>13 A. -- on the matrix.</p> <p>14 Q. And I interrupted. I apologize, Dr. Collins.</p> <p>15 Did you finish?</p> <p>16 A. No, I was clarifying, it could be one of the</p> <p>17 metrics.</p> <p>18 Q. What part of the other potential factors?</p> <p>19 A. So in addition to positivity, there is also the</p> <p>20 looking at cases per county and the eight per 100,000 cut</p> <p>21 point. So there's the percent of positivity of tests and</p> <p>22 then there's the cases per county.</p> <p>23 Q. And -- and I'm not quite certain I'm hearing you.</p> <p>24 Case something per county? Case?</p> <p>25 A. Cases per county.</p>	<p style="text-align: right;">24</p> <p>1 MS. DUDLEY: Objection, form, foundation.</p> <p>2 A. You know, we are evaluating data specific to New</p> <p>3 Mexico and we need to continue to look at our numbers to</p> <p>4 decide what makes sense for us.</p> <p>5 Q. (BY MR. ROGERS) So do you have any sense of</p> <p>6 what -- what numbers would make sense for New Mexico? In</p> <p>7 that regard, the positivity rate?</p> <p>8 A. No, not as of today.</p> <p>9 Q. You told the Senate committee this morning that</p> <p>10 it was vital to have businesses at the table, and by that,</p> <p>11 I understood you to say that it was important that the</p> <p>12 state hear and understand the concerns, and in some</p> <p>13 instances, the desperation of the people who are out of</p> <p>14 work and the employers who are in financial straits.</p> <p>15 Are you aware of any trampoline owners getting a</p> <p>16 chance to talk to DOH or anyone about the devastation that</p> <p>17 they're trying to deal with?</p> <p>18 MS. DUDLEY: Objection, form.</p> <p>19 A. No, I'm not aware.</p> <p>20 Q. (BY MR. ROGERS) Are you aware that the</p> <p>21 definitions of "close-contact business" and "close-contact</p> <p>22 recreational facilities" have changed over time?</p> <p>23 A. No, I'm not aware.</p> <p>24 Q. Would that make any difference to your evaluation</p> <p>25 of whether trampoline gyms belong in the category with</p>

25

1 gyms and group fitness classes or not?

2 A. I would consider that it might influence, yes,

3 how I'm thinking.

4 Q. What else might influence how you're thinking

5 with regard to whether trampoline gyms have been properly

6 placed in a category?

7 A. No additional thoughts at this time.

8 Q. Okay. I'd like to ask about the current public

9 health order. It's Exhibit 1.

10 (Exhibit No. 1 marked for identification.)

11 MR. ROGERS: Mr. Artuso?

12 MR. ARTUSO: I'm working on it, Pat. For

13 some reason, it pulled up -- oh, I see. There it is.

14 Q. (BY MR. ROGERS) Dr. Collins, this is the current

15 public health order, January 29, 2021. And I'd like to

16 refer you to page 13, paragraph 6. And I think you were

17 asked a question somewhat referencing that this morning.

18 And this is your order, correct?

19 A. Correct.

20 Q. And you reviewed it before you signed it, right?

21 A. Correct.

22 Q. And it indicates that "Any and all State

23 officials authorized by the Department of Health may

24 enforce this order." What's the process -- well, what's

25 the process for authorizing any and all State officials to

26

1 enforce this order?

2 A. In my short tenure here, I've not actually seen

3 the paperwork that spells out the process.

4 Q. Do you know who it is at the Department of Health

5 that authorizes "any and all State officials" to enforce

6 the order?

7 A. I seek the input of general counsel for guidance.

8 Q. Okay. This would require some sort of -- some

9 sort of authority for someone else to issue and authorize

10 the enforcement of this order? If you're not doing it,

11 someone else must have been authorized to do so at the

12 Department of Health?

13 MS. DUDLEY: Objection, form.

14 A. It has to be authorized by the Department of

15 Health, and so I would want to defer to the paperwork to

16 understand the process that we have in place.

17 Q. (BY MR. ROGERS) Okay. There's -- it's

18 government, so there's going to be some sort of paper

19 trail here and assignment of authority, correct?

20 A. Correct.

21 Q. Okay. You were asked this morning as to why each

22 and every citation that the Department of Health proposes

23 a \$5,000 fine. And I think you indicated that that was

24 just not something in your knowledge at this time, right?

25 MS. DUDLEY: Objection, form.

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1 A. What I indicated was the up to 5,000 was the

2 range.

3 Q. (BY MR. ROGERS) Right. Didn't you tell the

4 committee that you thought it appropriate for discretion

5 to be exercised and perhaps citations less than \$5,000

6 might be appropriate?

7 MS. DUDLEY: Objection, form.

8 A. Yes.

9 Q. (BY MR. ROGERS) And what would be the criteria

10 to decide whether a \$5,000 maximum proposed fine is

11 appropriate or something less?

12 A. I do not have criteria in front of me. It would

13 be something I would consider and I'd want to speak with

14 counsel about the range.

15 Q. Okay. What -- under these circumstances, these

16 are businesses which the State has shut down and has

17 threatened with a \$5,000 violation for each day that

18 they're open, correct?

19 A. Up to 5,000, correct.

20 Q. Yeah. So under the circumstances where a

21 business is shut down, has no income, got to shed

22 employees, they still have all sorts of obligations:

23 rent, loan, insurance and so on, how is any fine

24 appropriate if they have no money coming in and they're

25 closed?

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1 MS. DUDLEY: Objection, form, foundation.

2 A. Public health orders during this pandemic are to

3 keep New Mexicans safe.

4 Q. (BY MR. ROGERS) And do you have some thought as

5 to how it makes sense to propose a \$5,000 fine against

6 small businesses or individuals who are now out of

7 business and have no source of income to take care of

8 their family or their employees?

9 A. Lack of enforcement of the public health orders

10 will put people at risk.

11 Q. Is there anything that you can add to your

12 answer?

13 A. No.

14 Q. What's the process for sending out a notice of

15 contemplated action by the department?

16 A. Again, in my short tenure here, I need to visit

17 with general counsel to understand what that process is.

18 Q. And so during your tenure, the notices that have

19 been sent out, you haven't been asked to approve, nor are

20 you informed about the notices; is that correct?

21 MS. DUDLEY: Objection, foundation.

22 A. Can you rephrase the question?

23 Q. (BY MR. ROGERS) Yes. During the time in which

24 you have been acting secretary, you haven't been asked to

25 approve any notice of contemplated action by the

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29	<p>1 department; is that correct?</p> <p>2 A. That's correct.</p> <p>3 Q. Do you know who it is that decides to send out</p> <p>4 these notices?</p> <p>5 A. That comes from general counsel.</p> <p>6 Q. Is that Mr. Jimenez?</p> <p>7 A. He's one of them, yes.</p> <p>8 Q. The administrative process to challenge these</p> <p>9 citations is -- starts with the hiring of a hearing</p> <p>10 officer who is hired and appointed by the Department of</p> <p>11 Health. The regulations provide that the hearing officer</p> <p>12 must hold a hearing within 60 days of the notice. The</p> <p>13 hearing officer has 30 days after the hearing to submit</p> <p>14 his report and recommendations to you, for a final</p> <p>15 decision. And your final decision is due 45 calendar days</p> <p>16 later and the decision must be mailed within 15 days,</p> <p>17 certified mail after that. So the regulations provide for</p> <p>18 150 days, plus however long it takes to get the U.S. mail.</p> <p>19 Let me first start with this: Have you signed</p> <p>20 off on any recommended decisions?</p> <p>21 A. Since my start date of December 14th, I don't</p> <p>22 recall signing off on any.</p> <p>23 Q. Is someone else doing -- doing that task, signing</p> <p>24 off the decisions that are assigned to the secretary?</p> <p>25 MS. DUDLEY: Objection, foundation.</p>	31	<p>1 MS. DUDLEY: Objection, foundation, form.</p> <p>2 A. I'm not aware.</p> <p>3 Q. (BY MR. ROGERS) Okay. What do you know about</p> <p>4 the impartial hearing officers hired by the Department of</p> <p>5 Health to review the Department of Health's decisions?</p> <p>6 A. Can you rephrase the question?</p> <p>7 Q. Yes. There are -- by regulation, impartial</p> <p>8 hearing officers are hired by the Department of Health to</p> <p>9 review the Department of Health's decisions. And are</p> <p>10 you -- do you have any knowledge about those procedures?</p> <p>11 A. No, I do not.</p> <p>12 Q. Do you have any knowledge about the hiring of</p> <p>13 impartial hearing officers?</p> <p>14 A. No, I do not.</p> <p>15 Q. Are you aware of any DOH hearing officer ever</p> <p>16 finding against the department in any COVID-related</p> <p>17 citation to fine or shut down a business?</p> <p>18 MS. DUDLEY: Mr. Rogers, if you're going to</p> <p>19 continue to relitigate your administrative law hearing --</p> <p>20 or law case, I'm going to have to direct the witness not</p> <p>21 to answer at this point.</p> <p>22 MR. ROGERS: I think you're misunderstanding.</p> <p>23 We're not at that point in the administrative law case.</p> <p>24 I'm asking about procedures and I'm asking about the</p> <p>25 State's system and process for addressing concerns and the</p>
30	<p>1 A. What I can say is that I've signed public health</p> <p>2 orders that I remember signing.</p> <p>3 Q. (BY MR. ROGERS) And -- and so to the best of</p> <p>4 your memory, you've never had to review recommended</p> <p>5 decisions and make the final decision on behalf of the</p> <p>6 Department of Health concerning one of these COVID</p> <p>7 violations?</p> <p>8 A. I have deferred to general counsel.</p> <p>9 Q. Have you been consulted at all during your time</p> <p>10 as the acting secretary, concerning those decisions?</p> <p>11 A. I do not recall.</p> <p>12 Q. You're aware the State of New Mexico has taken a</p> <p>13 legal position that no damages will be paid to any</p> <p>14 business for any shutdown under these public health</p> <p>15 orders; you're aware of that, right?</p> <p>16 MS. DUDLEY: Counsel, I think you should wrap</p> <p>17 up this line of questioning. We've given you some</p> <p>18 latitude, but if you're going to relitigate your</p> <p>19 administrative law case here, that's not appropriate.</p> <p>20 MR. ROGERS: Okay. Thank you.</p> <p>21 Q. (BY MR. ROGERS) Can you answer, Dr. Collins?</p> <p>22 A. I cannot.</p> <p>23 Q. Okay. The department has not adopted a rule that</p> <p>24 would allow people and businesses to challenge the public</p> <p>25 health orders, has the department?</p>	32	<p>1 devastation that is being inflicted upon small businesses.</p> <p>2 So I'm going to ask Dr. Collins to answer that question.</p> <p>3 Or let me -- let me see if we can speed this up.</p> <p>4 Q. (BY MR. ROGERS) You don't have any knowledge</p> <p>5 about what hearing officers do with regard to citations,</p> <p>6 right?</p> <p>7 A. Not as of today, that's correct.</p> <p>8 Q. And so you wouldn't know if any hearing officer</p> <p>9 ever hired by the Department of Health, has ever reduced a</p> <p>10 fine proposed by the Department of Health, right? You</p> <p>11 wouldn't know?</p> <p>12 MS. DUDLEY: Objection, form.</p> <p>13 A. I don't know.</p> <p>14 Q. (BY MR. ROGERS) Correct?</p> <p>15 A. Correct.</p> <p>16 Q. And you wouldn't know if a hearing officer hired</p> <p>17 by the Department of Health ever found against the</p> <p>18 department in any administrative hearing related to COVID</p> <p>19 or any public health order, would you?</p> <p>20 MS. DUDLEY: Objection, form.</p> <p>21 A. You know, two months on the job and the word</p> <p>22 "ever" seem a bit contradictory; no, I do not.</p> <p>23 MR. ROGERS: Okay. Exhibit 2, please.</p> <p>24 (Exhibit No. 2 marked for identification.)</p> <p>25 Q. (BY MR. ROGERS) Executive Order 2020-04 is -- is</p>

33	<p>1 the Governor's sort of foundational or original -- one of 2 the early Executive Orders and it's still in effect. I'd 3 like you to turn to page 2, paragraph 1. The governor is 4 directing all branches of State government to minimize 5 physical and economic harm. Has the Department of Health 6 done anything to minimize physical and economic harm? 7 MS. DUDLEY: Objection, form. 8 A. Can you rephrase the question? 9 Q. (BY MR. ROGERS) Yes. And I'll -- and why don't 10 you take just a minute to read the paragraph, because I 11 skipped from the beginning, where it reads: "All branches 12 of State government shall cooperate with federal 13 authorities, other states and private agencies to provide 14 resources and service necessary to minimize physical and 15 economic harm." 16 I'm going to ask you to tell me what the 17 Department of Health has done to address the economic harm 18 of the shutdown orders that have been -- the public health 19 orders that have been promulgated? 20 MS. DUDLEY: Objection, form. 21 A. We have worked to keep New Mexicans safe and to 22 reduce morbidity and mortality by keeping people alive. 23 We have allowed for them to still have an opportunity in 24 the future to reopen their businesses. 25 Q. (BY MR. ROGERS) And so, that would be the extent</p>	35	<p>1 COVID cases, how many may be false positive tests? 2 MS. DUDLEY: Objection, form, foundation. 3 A. I don't have that number. 4 Q. (BY MR. ROGERS) There is a number, though, 5 right? I mean, that's in the scientific literature and 6 false positive tests are just a function of where we are 7 today in the application of the science? 8 MS. DUDLEY: Objection, form, foundation. 9 A. False positives vary by the test and they are a 10 part of that, but it's not a number that we readily have 11 available. It's not factored into sensitivity. 12 Q. (BY MR. ROGERS) Why isn't it factored into 13 sensitivity? 14 A. Because sensitivity is true positives, and true 15 positives plus false negatives. 16 Q. How can you have a true positive if you don't 17 know how many false positive tests you have? 18 MS. DUDLEY: Objection, form. 19 A. We don't -- we don't have that data readily 20 available. That's by lab. 21 Q. (BY MR. ROGERS) Okay. So if I understand, there 22 is a number; there's scientific analysis of the percentage 23 of false positive tests for antigen testing, it's just 24 something that you don't have at this point in time? 25 A. Correct.</p>
34	<p>1 of the -- of the -- of the assistance to minimize economic 2 harm that you're aware of? 3 MS. DUDLEY: Objection, form. 4 A. There's probably more, but as of today, that's 5 what my response is. 6 Q. (BY MR. ROGERS) In the current public health 7 order, the most recent figures indicate 176,211 positive 8 COVID-19 cases and 3,355 related deaths in New Mexico. 9 Does that sound about right? 10 A. Sounds pretty close, yes. 11 Q. New Mexico does not use the antigen testing, it 12 uses PCR testing, right? 13 MS. DUDLEY: Objection, form. 14 A. You'll need to clarify where the PCR testing is 15 done. 16 Q. (BY MR. ROGERS) In New Mexico -- you referred to 17 it this morning, testing for COVID 19 is via the PCR 18 testing, right? 19 A. In the community, that's correct. 20 Q. Okay. You're drawing a distinction and I'm not 21 sure what you mean, "in the community." What do you mean? 22 A. Right. So, largely, when someone goes to one of 23 our sites for testing, it's PCR testing. When we have 24 testing in shelters, it's antigen testing. 25 Q. On the antigen testing of the 176,211 positive</p>	36	<p>1 Q. So under the PPV, the positive predicted value, a 2 test with a 98 percent specificity would have a positive 3 predicted value of just over 80 percent in a population 4 with 10 percent prevalence, right? And that would mean -- 5 MS. DUDLEY: Objection -- oh, I'm sorry. I'm 6 sorry. 7 Q. (BY MR. ROGERS) And that would mean 20 out of 8 100 positive tests would be false positives? 9 MS. DUDLEY: Objection, foundation, form. 10 Q. (BY MR. ROGERS) Can I direct your attention to 11 Exhibit 2A, the FDA letter? 12 A. Sure. 13 (Exhibit No. 2A marked for identification.) 14 Q. This is from the FDA. And are you familiar with 15 this analysis and this work by the FDA concerning false 16 positives in the antigens? 17 A. I have not read this report. 18 Q. Okay. Is there a reason that the State has not 19 attempted to address the false positive tests with 20 antigens? 21 MS. DUDLEY: Objection, foundation, form. 22 A. With broad use, except in shelters, of PCR 23 testing, we've not looked at this data in antigen testing. 24 Q. (BY MR. ROGERS) Okay. The total New Mexico 25 population is approximately 2 million; is that --</p>

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37	<p>1 A. That's correct.</p> <p>2 Q. -- is that about right?</p> <p>3 And given the 176,211 reported positive tests as</p> <p>4 of February 4th, that would be about 8.8 percent of the</p> <p>5 population?</p> <p>6 MS. DUDLEY: Objection, form.</p> <p>7 A. If you have a calculator, that sounds correct.</p> <p>8 It's about 2.1 million for the population and yes.</p> <p>9 Q. (BY MR. ROGERS) All right. And do you have a</p> <p>10 sense -- or better yet, an actual number or percentage of</p> <p>11 how much of the testing is antigen and how much is PCR?</p> <p>12 A. I do not have a number.</p> <p>13 Q. Is the antigen just used in those communal</p> <p>14 settings that you discussed, of jails, shelters, and so</p> <p>15 on?</p> <p>16 A. Actually, it's also used in long-term care</p> <p>17 facilities but it's combined with PCR testing.</p> <p>18 MR. ROGERS: Okay. Can I have Exhibit 3,</p> <p>19 please?</p> <p>20 (Exhibit No. 3 marked for identification.)</p> <p>21 Q. This is the report on the PCR testing for</p> <p>22 COVID-19. And as of February 4th, page 2, it indicates</p> <p>23 that 2,386,859 PCR tests have been conducted in New</p> <p>24 Mexico. And so, we now have tested more than the total</p> <p>25 population of the state, right?</p>	39	<p>1 A. No, I do not.</p> <p>2 Q. And that's something that the State could</p> <p>3 determine, right?</p> <p>4 A. I'd have to think about that question. Again, it</p> <p>5 depends on the lab and what tests they're using.</p> <p>6 Q. Other states and other countries calculate the</p> <p>7 false positive rate for PCR tests, right?</p> <p>8 MS. DUDLEY: Objection, form, foundation.</p> <p>9 A. I don't know what other states are doing.</p> <p>10 Q. (BY MR. ROGERS) Do you know that there's</p> <p>11 scientific literature about this issue, the false positive</p> <p>12 rate of PCR tests?</p> <p>13 A. Yes, I do.</p> <p>14 Q. Have you studied that?</p> <p>15 A. Not recently. It's been a fire hydrant since I</p> <p>16 started.</p> <p>17 MR. ROGERS: Can I have Exhibit 4, please?</p> <p>18 (Exhibit No. 4 marked for identification.)</p> <p>19 Q. Page 3, please. This is the conclusion here:</p> <p>20 With a 1 percent infection rate in the test population, a</p> <p>21 false positive rate of only .5 percent leads to nearly 40</p> <p>22 percent of the positive test results being wrong. Is that</p> <p>23 consistent with what you know about the literature and</p> <p>24 false positive rates?</p> <p>25 MS. DUDLEY: Objection, form.</p>
38	<p>1 MS. DUDLEY: Objection, form.</p> <p>2 A. Tested more -- can you rephrase the question?</p> <p>3 Q. (BY MR. ROGERS) Yeah. We now have more tests</p> <p>4 than we have people, right?</p> <p>5 MS. DUDLEY: Objection, form.</p> <p>6 A. The number of tests based on this one number</p> <p>7 you're showing me is greater than the number of people in</p> <p>8 the State of New Mexico.</p> <p>9 Q. (BY MR. ROGERS) Okay. And -- and -- and I did</p> <p>10 use a calculator. If you take the positives and divide by</p> <p>11 the tests, I get about 7.4 percent of the tests were</p> <p>12 positive. Does that sound approximately correct?</p> <p>13 A. If your --</p> <p>14 MS. DUDLEY: Objection, foundation, form.</p> <p>15 You can go ahead, Dr. Collins.</p> <p>16 A. If you're good with the calculator and I can</p> <p>17 trust you, sounds correct.</p> <p>18 Q. (BY MR. ROGERS) Okay. PCR tests also have a</p> <p>19 false positive rate, right?</p> <p>20 MS. DUDLEY: Objection, foundation, form.</p> <p>21 A. Any test has both a false negative and a false</p> <p>22 positive rate, that's correct.</p> <p>23 Q. (BY MR. ROGERS) Do you know what the false</p> <p>24 positive rate is for the PCR tests administered in New</p> <p>25 Mexico?</p>	40	<p>1 A. I would have to review this, what you're showing</p> <p>2 me, in depth to give you an honest answer that I would</p> <p>3 feel good about.</p> <p>4 Q. (BY MR. ROGERS) Okay. Has the Department been</p> <p>5 doing anything to control for false positive tests in the</p> <p>6 PCR testing?</p> <p>7 A. Controlling for false positives is at the level</p> <p>8 of the actual lab with the type of test they use, it's not</p> <p>9 at the level of the Department of Health.</p> <p>10 Q. The Department of Health could address the tests</p> <p>11 in each facility and determine false positive rates</p> <p>12 depending on how the facility administers the test, right?</p> <p>13 MS. DUDLEY: Objection, foundation, form.</p> <p>14 A. We can certainly look at the data and decide if</p> <p>15 we think that it's a good approach, yes.</p> <p>16 Q. (BY MR. ROGERS) And the conclusion of this</p> <p>17 article here is that -- it says here, in fact, just the</p> <p>18 opposite is true, negative results are reliable and</p> <p>19 positive results are not when the infection rate is low.</p> <p>20 Let's back up. Let's -- let's start -- let's</p> <p>21 start here. Notice that this doesn't align with what most</p> <p>22 health authorities have been telling us, which is that</p> <p>23 what we can trust the positive PCR results as proof that</p> <p>24 we are definitely infected, but that we can't rely on a</p> <p>25 negative result as proof we're not infected.</p>

41	<p>1 The conclusion is, in fact, just the opposite is</p> <p>2 true -- negative results are reliable and positive results</p> <p>3 are not -- when the infection rate is low. Do you have</p> <p>4 any reason to disagree with that, Dr. Collins?</p> <p>5 MS. DUDLEY: Objection, form.</p> <p>6 A. I would want to see this entire article and not</p> <p>7 just take snapshots, to give you an answer.</p> <p>8 Q. (BY MR. ROGERS) Okay. I've sent the article to</p> <p>9 your counsel and I hope that they send that to you as well</p> <p>10 as some other material that I'm hoping that you look at</p> <p>11 carefully.</p> <p>12 Is the New Mexico -- and I want to use words that</p> <p>13 you're comfortable with. I read to you Dr. Smelser's</p> <p>14 conclusion that New Mexico was the most aggressive with</p> <p>15 regard to restrictions on businesses and activities. And</p> <p>16 I believe that your response was, well, maybe not the</p> <p>17 most, but certainly New Mexico is aggressive with regard</p> <p>18 to the public health orders, right?</p> <p>19 MS. DUDLEY: Objection, form.</p> <p>20 A. Correct.</p> <p>21 Q. (BY MR. ROGERS) So, given that New Mexico is</p> <p>22 either the most restrictive with regard to businesses and</p> <p>23 activities, or one of the most, how is it clear that the</p> <p>24 lockdowns have worked?</p> <p>25 A. So what we can see from the start of our first</p>	43	<p>1 MS. DUDLEY: Objection to form.</p> <p>2 A. How are you defining "significant"?</p> <p>3 Q. (BY MR. ROGERS) However you usually use the</p> <p>4 word.</p> <p>5 A. I usually use the word significant when there's a</p> <p>6 P value of less than .05. In the absence of a study, I</p> <p>7 don't have that P value.</p> <p>8 Q. Okay. All right. Do you know what the actual --</p> <p>9 do you have a sense of what the actual reduction is from</p> <p>10 October until now?</p> <p>11 A. I do not.</p> <p>12 Q. Okay. In the report -- in the February 4th, 2021</p> <p>13 report of 176,211 cases and 3,355 COVID-related deaths, if</p> <p>14 you do those numbers, I get a mortality rate of 1.9</p> <p>15 percent. I'd like to compare that to a state that did not</p> <p>16 lock down.</p> <p>17 MR. ROGERS: Exhibit 5 please -- Florida.</p> <p>18 (Exhibit No. 5 marked for identification.)</p> <p>19 Q. And actually, before this, Dr. Collins, since the</p> <p>20 state -- state's restrictions upon close-contact</p> <p>21 recreational facilities has not changed since June, it</p> <p>22 would not be correct to suggest that the state's</p> <p>23 prohibition of close-contact recreational facilities such</p> <p>24 as a trampoline -- trampoline gyms is responsible for the</p> <p>25 increase in October, right?</p>
42	<p>1 case in March of 2020, until now, we actually did quite</p> <p>2 well until around October when we started seeing a surge</p> <p>3 in cases. So our practices of distancing, hand washing</p> <p>4 and wearing a mask, were in fact containing the virus and</p> <p>5 the spread, in helping to reduce hospitalizations, until</p> <p>6 we began to relax in October.</p> <p>7 Q. What study do you have that suggests that the New</p> <p>8 Mexicans relaxed in October and that is the cause for the</p> <p>9 increased incidence of COVID-19 positive results?</p> <p>10 A. There is no study.</p> <p>11 Q. Didn't the entire nation undergo the exact same</p> <p>12 thing, a significant increase in reported positive tests</p> <p>13 in October?</p> <p>14 MS. DUDLEY: Objection, form.</p> <p>15 A. I'd have to go back and look at the data.</p> <p>16 Q. (BY MR. ROGERS) Isn't the entire nation right</p> <p>17 now also benefiting from the significant reduction in</p> <p>18 COVID-19 positive tests results?</p> <p>19 MS. DUDLEY: Objection, form.</p> <p>20 A. I would not say -- use the word "significant</p> <p>21 reduction," but there is a downward trend, yes.</p> <p>22 Q. (BY MR. ROGERS) Well, why -- why isn't it</p> <p>23 significant? Just looking at the New Mexico numbers,</p> <p>24 those are certainly a significant reduction from October,</p> <p>25 aren't they?</p>	44	<p>1 MS. DUDLEY: Objection, form.</p> <p>2 A. I can't answer that question.</p> <p>3 Q. (BY MR. ROGERS) Well, let me see if I can help</p> <p>4 you. There -- there could be no possible conclusion, no</p> <p>5 possible science that would support the proposition that</p> <p>6 the increase in October is due to close-contact</p> <p>7 recreational facilities, since the state has had them shut</p> <p>8 down since June, right?</p> <p>9 MS. DUDLEY: Objection, form, foundation.</p> <p>10 A. Can you rephrase the question?</p> <p>11 Q. (BY MR. ROGERS) Yes. Yes. I'm on the verge of</p> <p>12 talking about some cause and effect and correlation and</p> <p>13 causation and regression analysis, but I wanted to ask</p> <p>14 just a simpler question.</p> <p>15 The cases that increased in October, they cannot</p> <p>16 possibly be blamed on close-contact recreational</p> <p>17 facilities because those have been closed since June,</p> <p>18 correct?</p> <p>19 A. I cannot make that assumption, but it would be</p> <p>20 hard to believe that if they've actually been closed that</p> <p>21 had they contributed, so that's my thoughts.</p> <p>22 Q. Okay. Are you aware of any report of the</p> <p>23 transmission of COVID-19 in a trampoline gym or park or</p> <p>24 business ever?</p> <p>25 MS. DUDLEY: Objection, form.</p>

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45	<p>1 A. So keep in mind there's asymptomatic and</p> <p>2 symptomatic. I'm not aware. It doesn't mean it doesn't</p> <p>3 exist.</p> <p>4 Q. (BY MR. ROGERS) Okay. And recently there were,</p> <p>5 what, 21,000,000 reported COVID positive tests in America?</p> <p>6 A. I have not looked at the John's Hopkins website</p> <p>7 in a few weeks so I don't know.</p> <p>8 Q. Okay. Can you help me with the math? I want you</p> <p>9 to assume that -- that there are 2 possible reported</p> <p>10 transmissions in the world and there are 100,000,000</p> <p>11 reported cases. Can you help me with the math? What</p> <p>12 would that look like as a percentage? How many zeroes</p> <p>13 before the 2 -- 2 out of 100,000,000 million?</p> <p>14 A. Sir, I'm going to defer to you to use your</p> <p>15 calculator.</p> <p>16 Q. Well, that ain't going to work. I'm a -- I'm a</p> <p>17 lawyer, I could not figure this out, if it was seven</p> <p>18 zeroes or nine. And so, I guess we'll have to leave that</p> <p>19 one open. It's a minuscule number, right, 2 out of</p> <p>20 100,000,000?</p> <p>21 MS. DUDLEY: Objection, foundation.</p> <p>22 A. It's a small -- it is a small proportion.</p> <p>23 Q. (BY MR. ROGERS) And if there are no reported</p> <p>24 transmissions in America in the 49 other states that</p> <p>25 allowed trampoline gyms to be open, would that suggest to</p>	47	<p>1 MS. DUDLEY: Objection, form.</p> <p>2 A. Community spread is a real issue and when you</p> <p>3 have a large amount of cases in a given county, the spread</p> <p>4 can occur in multiple places, and the idea is to keep</p> <p>5 places that could increase that risk, closed.</p> <p>6 MS. DUDLEY: Counsel, if I may? We've been</p> <p>7 going over an hour. Is it -- is now a good standing point</p> <p>8 to take a quick break?</p> <p>9 (Video dropped Mr. Rogers.)</p> <p>10 VIDEOGRAPHER: It looks like he might have</p> <p>11 got disconnected. I'll take us -- oh, is he back? There</p> <p>12 we go.</p> <p>13 MR. ROGERS: A thousand apologies,</p> <p>14 Dr. Collins. It's large fingers and small buttons. I</p> <p>15 apologize, Doctor.</p> <p>16 MS. DUDLEY: Counsel, I just asked if we</p> <p>17 would take a five-minute break. Is now a good time?</p> <p>18 MR. ROGERS: Absolutely.</p> <p>19 MS. DUDLEY: Thank you. I appreciate it.</p> <p>20 MR. ROGERS: Sorry about that, Dr. Collins.</p> <p>21 VIDEOGRAPHER: We are now off the record.</p> <p>22 The time is 3:37.</p> <p>23 (Recess taken from 3:37 p.m. to 3:48 p.m.)</p> <p>24 VIDEOGRAPHER: We are back on the record.</p> <p>25 The time is 3:48.</p>
46	<p>1 you that the -- certainly the evidence that the risk of</p> <p>2 allowing trampoline gyms to operate is pretty small,</p> <p>3 negligible perhaps?</p> <p>4 MS. DUDLEY: Objection, form, foundation.</p> <p>5 A. For every case you have several people who have</p> <p>6 actually been exposed and are carriers. I cannot make</p> <p>7 that leap that you're asking me to make and conclude with</p> <p>8 you that what you're saying is correct.</p> <p>9 Q. (BY MR. ROGERS) So as a matter of science, the</p> <p>10 fact that there is no reported case of transmission of</p> <p>11 COVID in a trampoline gym in America, is not significant</p> <p>12 to a decision as to whether the risk is also minuscule --</p> <p>13 the risk of opening that trampoline gym?</p> <p>14 MS. DUDLEY: Objection, form, foundation.</p> <p>15 Q. (BY MR. ROGERS) Is that correct?</p> <p>16 A. The lack of a reported case is not sufficient to</p> <p>17 say that there is no case. It's just not reported or</p> <p>18 minimally reported, so there's a reporting issue there.</p> <p>19 Q. What's the reporting issue?</p> <p>20 A. Yes or no, that you're reporting where the case</p> <p>21 came from, and you're reporting it accurately.</p> <p>22 Q. The 21 -- do you have reason to believe that --</p> <p>23 that there is transmission of COVID in trampoline gyms in</p> <p>24 America, although there are -- although there are no</p> <p>25 reports to that effect?</p>	48	<p>1 MR. ROGERS: Could we -- Mr. Artuso, could</p> <p>2 you put up Exhibit 5?</p> <p>3 Q. (BY MR. ROGERS) Dr. Collins, have you or has</p> <p>4 anyone at DOH compared what's going on in Florida with the</p> <p>5 New Mexico outcomes, the COVID-related deaths?</p> <p>6 A. I have not.</p> <p>7 Q. Let me do that for you. What Exhibit 5 tells you</p> <p>8 is that in Florida -- the state famous for being open --</p> <p>9 there have been 1,000,849,744 cases and 29,474 deaths.</p> <p>10 And that -- and that results in a fatality rate of 1.6</p> <p>11 percent.</p> <p>12 New Mexico, for that very same time, has a</p> <p>13 fatality rate of 1.9 percent. And the numbers are 176,211</p> <p>14 cases and 3,355 COVID-related cases. So that certainly</p> <p>15 doesn't support a strict shutdown, public health orders</p> <p>16 that New Mexico has imposed, does it?</p> <p>17 MS. DUDLEY: Objection, form, foundation.</p> <p>18 A. Please rephrase the question.</p> <p>19 Q. (BY MR. ROGERS) Yes. Florida, which is widely,</p> <p>20 widely noted for the lack of lockdown and orders and</p> <p>21 restrictions on businesses and individuals, they have a</p> <p>22 fatality rate, the most recent, as of February 18th, of</p> <p>23 1.6 percent. New Mexico's, for the same period, is 1.9</p> <p>24 percent. Those statistics certainly do not support the</p> <p>25 proposition that New Mexico's lockdown orders have been</p>

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49	<p>1 effective, do they?</p> <p>2 MS. DUDLEY: Objection, form, foundation.</p> <p>3 A. Our lockdown orders are to keep New Mexicans</p> <p>4 safe.</p> <p>5 Q. (BY MR. ROGERS) Florida's population is even</p> <p>6 more elderly than New Mexico's, right?</p> <p>7 MS. DUDLEY: Objection, foundation.</p> <p>8 Q. (BY MR. ROGERS) The statistics available</p> <p>9 publicly is that Florida has 20.5 percent of the</p> <p>10 population over 65 years old. And in New Mexico it's</p> <p>11 16.9. We know that COVID is more difficult or even fatal</p> <p>12 to older people, right?</p> <p>13 A. It is more fatal for those 75 and older, that's</p> <p>14 correct.</p> <p>15 Q. In 65 and older as well?</p> <p>16 A. There is an increased risk for those 65 and</p> <p>17 older, that's correct.</p> <p>18 Q. And it's a public fact that Florida's population</p> <p>19 density is much more dense than New Mexico: 378 persons</p> <p>20 per square mile, and New Mexico is 17 persons per square</p> <p>21 mile. So Florida, with a larger overall population, a</p> <p>22 higher percentage of its population over 65, a density</p> <p>23 that is 22 times greater than New Mexico, no lockdowns,</p> <p>24 and it still has a lower fatality rate than New Mexico;</p> <p>25 1.6 to 1.9 percent.</p>	51	<p>1 A. Can you rephrase the question?</p> <p>2 Q. (BY MR. ROGERS) Yes. South Dakota; South Dakota</p> <p>3 is very similar to New Mexico in many ways, right? It's</p> <p>4 a -- it's a rural state -- a western rural state, correct?</p> <p>5 A. I don't know that it's very similar to New</p> <p>6 Mexico.</p> <p>7 Q. In population density is it similar?</p> <p>8 A. I don't know.</p> <p>9 Q. Native American population, is it similar?</p> <p>10 A. I don't know the data on South Dakota.</p> <p>11 Q. The population density, the public knowledge is</p> <p>12 11 persons per square mile compared to New Mexico's 17</p> <p>13 persons per square mile. So -- and in South Dakota, 16.6</p> <p>14 percent of the population is over 65 years of age, and</p> <p>15 again, New Mexico is 16.9 percent. Do you know what the</p> <p>16 most recent fatality rates for South Dakota compared to</p> <p>17 New Mexico are?</p> <p>18 A. No.</p> <p>19 Q. Let me give those to you: 1.7 in South Dakota --</p> <p>20 which, like Florida, is famous for not locking down -- and</p> <p>21 New Mexico's fatality rates are 1.9 percent. Does that</p> <p>22 suggest to you some concern that our lockdown orders are</p> <p>23 too onerous and they're not having the impact that people</p> <p>24 think that they do?</p> <p>25 MS. DUDLEY: Objection, form, foundation.</p>
50	<p>1 Do you think there is nothing that can be learned</p> <p>2 from these statistics, the science, that would suggest</p> <p>3 that maybe our lockdown orders are too onerous?</p> <p>4 MS. DUDLEY: Objection, form, foundation.</p> <p>5 A. When you consider who's at risk for complications</p> <p>6 with COVID, it is not just age, it's also chronic</p> <p>7 conditions and New Mexico is also socially vulnerable as</p> <p>8 far as impoverished people. Those factors increase our</p> <p>9 risk for complications from COVID, so you cannot compare</p> <p>10 New Mexico to Florida.</p> <p>11 Q. (BY MR. ROGERS) Is it your understanding that</p> <p>12 New Mexico has a greater incidence of chronic conditions</p> <p>13 than Florida?</p> <p>14 A. It's my understanding that there's a high</p> <p>15 prevalence of chronic conditions in the State of New</p> <p>16 Mexico.</p> <p>17 Q. And do you know if it's greater or lesser than</p> <p>18 Florida's?</p> <p>19 A. The chronic conditions rates in Florida, I'm not</p> <p>20 familiar with. I just know we're very high in New Mexico.</p> <p>21 Q. Well, let's pick South Dakota. South Dakota has</p> <p>22 a lot in common with New Mexico, right? It's a rural</p> <p>23 state, it's got a high percentage of Native Americans.</p> <p>24 Would you agree?</p> <p>25 MS. DUDLEY: Objection, form, foundation.</p>	52	<p>1 A. No.</p> <p>2 Q. (BY MR. ROGERS) What does it tell you? That the</p> <p>3 experts in New Mexico are just superior to those in</p> <p>4 Florida or South Dakota, that are addressing these</p> <p>5 lockdown orders and how to deal with COVID?</p> <p>6 MS. DUDLEY: Objection, form.</p> <p>7 A. Can you rephrase the question?</p> <p>8 Q. (BY MR. ROGERS) Yes. It would be a fair</p> <p>9 assumption that both Florida and South Dakota take their</p> <p>10 responsibilities to their population seriously, right?</p> <p>11 MS. DUDLEY: Objection, form, foundation.</p> <p>12 MR. ROGERS: What's wrong with the form or</p> <p>13 foundation of that question?</p> <p>14 MS. DUDLEY: You're asking her to know</p> <p>15 something about Florida or Texas when she -- I mean --</p> <p>16 excuse me: Florida or South Dakota, what their</p> <p>17 governments do, when she's not a part of that government</p> <p>18 and she said she does not know the data for those states.</p> <p>19 Q. (BY MR. ROGERS) So you don't think it's</p> <p>20 reasonable to assume that Florida and South Dakota have</p> <p>21 experts who are concerned in trying to deal with COVID-19,</p> <p>22 Dr. Collins?</p> <p>23 A. I don't know.</p> <p>24 Q. You don't think their experience is instructive</p> <p>25 and should be considered when New Mexico is contemplating</p>

53	<p>1 putting people out of business and on the unemployment 2 line?</p> <p>3 MS. DUDLEY: Objection, form, foundation.</p> <p>4 MR. ROGERS: What's wrong with that question?</p> <p>5 MS. DUDLEY: It's leading, it's speculative.</p> <p>6 MR. ROGERS: I hope it's leading.</p> <p>7 MS. DUDLEY: Understood.</p> <p>8 Dr. Collins, you can answer if you understand the 9 question.</p> <p>10 A. I don't know the specifics or details about South 11 Dakota or Florida.</p> <p>12 Q. (BY MR. ROGERS) And the question was, don't you 13 think that these other states's experiences, where they 14 have not put people out of business and employees on the 15 unemployment line, and have better results than we do; you 16 don't think there's something to learn and understand 17 about how they are addressing COVID in their states?</p> <p>18 MS. DUDLEY: Objection, form, foundation.</p> <p>19 A. I don't know the details of their states.</p> <p>20 Q. (BY MR. ROGERS) Okay. With regard to the 21 calculations about the impact of vaccinations on the 22 transmission of COVID, I think I've read or heard you say 23 something this morning that there had been a calculation 24 that there was a 20 percent reduction. Did I -- did I get 25 that right?</p>	55	<p>1 percent reduction, increasing the vaccinations should 2 further increase that number, right?</p> <p>3 MS. DUDLEY: Objection, form.</p> <p>4 A. All things remaining constant, we would hope so.</p> <p>5 Q. (BY MR. ROGERS) And -- and the way they did that 6 was a regression analysis, right?</p> <p>7 A. It was a modeling equation, correct.</p> <p>8 Q. And regression analysis is a reliable method of 9 identifying variables like vaccines or shutdown orders 10 that have an impact on the topic of interest -- in this 11 instance, COVID transmission, right?</p> <p>12 MS. DUDLEY: Objection, form.</p> <p>13 A. It depends on what the outcome that you're trying 14 to measure is.</p> <p>15 Q. (BY MR. ROGERS) If the outcome is COVID 16 transmission, which I think that was the -- the topic of 17 interest -- I think that was what was measured in the LANL 18 study, then a regression analysis is a reliable method of 19 identifying which variables, like the vaccine, would have 20 an impact on COVID transmission, right?</p> <p>21 A. It's one option, yes.</p> <p>22 Q. Okay. And why hasn't the state run a regression 23 analysis to determine if the shutdown orders have a 24 positive impact on COVID transmission?</p> <p>25 MS. DUDLEY: Objection, foundation.</p>
54	<p>1 A. Can you clarify?</p> <p>2 Q. Yes. The -- I thought that I understood that 3 someone has calculated that the vaccines are having a very 4 positive impact and that they are reducing transmission -- 5 transmission of COVID by 20 percent?</p> <p>6 A. So what has been presented based on LANL -- Los 7 Alamos National Laboratory, is that from some assumptions, 8 they believe that the vaccine has had an impact on cases 9 by reducing them by 20 percent.</p> <p>10 Q. Okay. And have you read that study?</p> <p>11 A. Sir, in modeling, this is not a study; this is 12 actually an analysis -- they're running an analysis. It 13 was not an actual study.</p> <p>14 Q. Have you reviewed the analysis?</p> <p>15 A. I've been presented with the numbers of what they 16 found.</p> <p>17 Q. So like an executive summary or something?</p> <p>18 A. A PowerPoint.</p> <p>19 Q. Was there any -- any linear projection, to say if 20 we -- if we continue at this rate of vaccinations, then we 21 should expect a higher number, and some prediction of what 22 that number is?</p> <p>23 A. No.</p> <p>24 Q. It stands to reason though, doesn't it, if the 25 level of vaccinations at this point has resulted in a 20</p>	56	<p>1 A. I cannot speak to what they did before I arrived 2 and I'm sure moving forward, we can get more information.</p> <p>3 Q. (BY MR. ROGERS) Would you agree that a 4 regression analysis of whether trampoline gyms contribute 5 to COVID transmission would be -- would be the science and 6 the knowledge and an objective basis for a decision as to 7 whether trampoline gyms should be prohibited and closed or 8 not?</p> <p>9 MS. DUDLEY: Objection, form.</p> <p>10 A. I'm going to redirect you to an analysis would be 11 helpful. We could look at that, yes.</p> <p>12 Q. (BY MR. ROGERS) What would that entail? What 13 would that analysis entail? How would you perform the 14 analysis?</p> <p>15 A. I'd have to work with the statisticians in LANL 16 to look at what variables we want to consider as 17 independent as predictors of case counts. And then 18 looking at that, we could then model and determine if the 19 shutdown had an impact.</p> <p>20 Q. And could you -- you could specifically address 21 whether prohibiting trampoline gyms has had an impact on 22 COVID transmission, right?</p> <p>23 MS. DUDLEY: Objection, foundation.</p> <p>24 A. When you're running an analysis, you're looking 25 at numbers in general and so you're looking at shutdown</p>

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57	<p>1 orders for a large number of people. So looking 2 specifically at trampoline parks and pulling out that one, 3 it's not going to be a stable model, so, no, I don't agree 4 with that. 5 Q. (BY MR. ROGERS) So there is -- there is no 6 analysis that can be done to establish the science as to 7 whether you should close or allow trampoline gyms to be 8 open? 9 MS. DUDLEY: Objection, form, foundation. 10 A. I would work with the statisticians to come up 11 with a reliable approach to look at that question. 12 Q. (BY MR. ROGERS) Do you have any sense of what 13 that reliable approach would be composed of? 14 A. Not at this moment. 15 Q. Are you aware of the State attempting any other 16 analysis of the adverse economic impacts of the shutdown 17 orders? 18 A. No, I'm not. 19 Q. And so it's fair to say that the benefit and the 20 damage of these shutdown orders has not been analyzed, 21 correct? 22 MS. DUDLEY: Objection, foundation. 23 A. I'd have to go back and look to see what was done 24 before I arrived, to answer that question. 25 Q. (BY MR. ROGERS) Presently, you're not aware of</p>	59	<p>1 out of work, right? 2 MS. DUDLEY: Objection, form. 3 A. Sir, it depends on the business and how many 4 people are out and the extent of that. 5 Q. (BY MR. ROGERS) So you're suggesting -- well, 6 what are the parameters there? What business would -- 7 closing what business would not have a seriously adverse 8 effect on the health of the employees -- the employers and 9 employees who are now out of work? 10 Can you give me an example of one closing that 11 would not have a seriously adverse effect on the health of 12 the employers and employees? 13 A. I'm sorry, but your question is too broad for me 14 to answer. 15 Q. Is it fair to say that to your knowledge, that no 16 one in the State of New Mexico has considered the adverse 17 effects on the health of the trampoline gym owners, 18 employers and employees that the shutdown orders have 19 caused? 20 MS. DUDLEY: Objection, form. 21 MR. ROGERS: What's wrong with that one. 22 MS. DUDLEY: I was confused by it, sir. It 23 was a very long question. 24 A. Could you please rephrase the question? 25 Q. (BY MR. ROGERS) Yes. Dr. Collins, are you aware</p>
58	<p>1 any consideration of the cost and damages to the 2 businesses -- owners and employees of these businesses, 3 such as a trampoline gym, that have been closed, correct? 4 A. Please rephrase the question. 5 Q. Yeah. Let me -- let me do it a different way 6 here. The State has done nothing with regard to 7 considering the cost and damages that the shutdown orders 8 are causing anyone or any business, correct? 9 MS. DUDLEY: Objection, foundation. 10 A. I don't know. 11 Q. (BY MR. ROGERS) Would you agree that the costs 12 and damages of these orders is clearly significant and 13 harmful? 14 MS. DUDLEY: Objection, foundation, form. 15 A. I don't know. 16 Q. (BY MR. ROGERS) Why don't you know? 17 A. Could you please rephrase the question? 18 Q. Yeah. If you were being forced to close a 19 business permanently and lose all of your investment and 20 hard work on that business, you'd agree that that could 21 very well be a great economic harm to you, right? 22 A. That could be. 23 Q. And for the vast majority of people, losing a 24 business will certainly have serious adverse effects on 25 the public health of those employers and employees who are</p>	60	<p>1 of anyone in the State of New Mexico's government that's 2 considered the damages and the cost inflicted upon those 3 persons whose business -- businesses have been shut down? 4 A. I'm not aware. 5 Q. It is a -- it is an indisputable fact that losing 6 your job is one of the most significant stressors that 7 people suffer from, right? It's right up there with 8 divorce and a few other things? 9 A. It's a significant stressor, yes. 10 Q. Yeah. And New Mexico is a very poor state. We 11 are now leading the nation in shutting down private 12 businesses. What are the health factors that are going to 13 become much worse because businesses are shut down, 14 employers are no longer to -- no longer able to meet their 15 bills, and employees are now on the unemployment line? 16 Can you think of any of the traditional public 17 health factors that are going to get better because of 18 these shutdown orders? 19 A. Could you rephrase the question? I heard two 20 different questions. 21 Q. Okay. The shutdown orders are putting people out 22 of business and it is putting employees on the 23 unemployment line, right? 24 A. Unemployment has grown, yes. 25 Q. And in fact, in January, New Mexico was the</p>

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<p style="text-align: right;">61</p> <p>1 second leading state for unemployment; our rates were the 2 second highest in the nation. Were you aware of that? 3 A. I had not seen those stats. 4 Q. Do you have any conception of New Mexico's 5 unemployment rates and where it fits nationally? 6 A. I'm familiar with the concerns with increase in 7 unemployment, but that's the extent of the numbers I have, 8 is just a trend of an increase. 9 Q. The state's lockdown orders is going to have an 10 adverse impact on suicide, right? 11 MS. DUDLEY: Objection, foundation. 12 MR. ROGERS: What's -- what's the foundation 13 there? It's a question. What's the foundation objection? 14 MS. DUDLEY: The question assumes that 15 suicide rates are going to be increased. 16 MR. ROGERS: Okay. 17 Q. (BY MR. ROGERS) Isn't it a -- isn't it a fact, 18 Dr. Collins, that COVID shutdowns, putting people out of 19 work and putting people on the unemployment line, is 20 without a doubt going to increase suicides? 21 A. I do not have data on a cause and effect, sir. 22 Q. So you don't have a professional opinion that 23 that people not being able to provide for their family, 24 and losing their life's investment, that isn't going to 25 lead to more suicides?</p>	<p style="text-align: right;">63</p> <p>1 literature about obesity, particularly childhood obesity, 2 during the shutdown? 3 A. I have not reviewed the literature. 4 Q. Who is the response -- who is responsible for the 5 decision to allow nail salons, spas, tanning salons, hair 6 salons, barber-ships [sic] barbershops -- excuse me -- 7 rafts and balloon tours, gyms, TopGolf, group fitness 8 classes and a professional soccer team to be open for 9 business, and miniature golf, auto racetracks, and a whole 10 bunch of other businesses to be closed? Who is -- who is 11 responsible for those decisions? 12 A. Those decisions come from the Department of 13 Health as part of our public health order. 14 Q. And at least from 30 minutes ago, it's now your 15 responsibility, right, as the Secretary of the Department 16 of Health? 17 A. Yes, it is now officially under my purview. 18 Q. And you're not aware of any actual science, any 19 actual studies to suggest these allowed activities are any 20 less risky than activities prohibited by the public health 21 orders, are you? 22 MS. DUDLEY: Objection, foundation, form. 23 A. I'm aware of studies regarding COVID and how you 24 contain it. 25 Q. (BY MR. ROGERS) Okay. And with regard to the</p>
<p style="text-align: right;">62</p> <p>1 A. What I would know is that based on the stress of 2 losing your job that you could have more depression. The 3 link to more suicides, I do not have that data. 4 Q. Okay. The lockdown is going to increase 5 incidence of diabetes, right? 6 MS. DUDLEY: Objection, foundation. 7 A. I do not have that data in front of me. 8 Q. (BY MR. ROGERS) You don't have a professional 9 opinion that -- that diabetes is going to be increased 10 because of the lockdown orders? 11 A. In my professional opinion, the lockdown orders 12 and loss of jobs and more stress is what I know will 13 happen. 14 Q. Okay. And more stress will lead to obesity 15 problems, right? 16 MS. DUDLEY: Objection, foundation. 17 A. We don't know that, sir. It's speculation. 18 Q. (BY MR. ROGERS) You don't -- you don't think 19 there's literature that indicates that stress from the 20 lockdown orders being -- your business closing and you 21 being out of a job, doesn't increase obesity? 22 A. Obesity is a chronic condition and having an 23 assessment within a pandemic that's been here for 11 24 months, I cannot make that association at this time. 25 Q. Have you -- have you attempted to review any</p>	<p style="text-align: right;">64</p> <p>1 distinctions that the Department of Health is drawing -- I 2 gave you the list of the ones that are allowed. And I'm 3 asking you if you're aware of any science, any actual 4 studies to suggest that these allowed activities and 5 businesses are any less risky than activities prohibited 6 by the public health orders? 7 A. I'm not aware of any studies. 8 Q. Are you aware of the changing definitions 9 contained in the public health orders? 10 A. I believe we started out the conversation with 11 you mentioning that, but prior to that, no. 12 Q. How was TopGolf approved to open, when there are 13 three sides in a very confined space? How is that less 14 risky than the collection of prohibited activities, for 15 instance, trampoline gyms? 16 MS. DUDLEY: Objection, form. 17 A. I'd have to go back and confer with general 18 counsel to make sure about how we made that decision since 19 it started with predating me. 20 Q. (BY MR. ROGERS) And, ultimately, did you make 21 that decision? 22 A. Ultimately, I'm now responsible for those 23 decisions -- decisions, as of December 14th. 24 Q. So did -- did you make that decision, that 25 TopGolf would be allowed to operate?</p>

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<p style="text-align: right;">65</p> <p>1 A. I signed the public health order, so, yes.</p> <p>2 Q. Why is TopGolf allowed, when they're confined on</p> <p>3 three sides, and restaurants, for instance, have to be</p> <p>4 open on three sides? How -- how do you make those</p> <p>5 decisions?</p> <p>6 A. I'd have to go and look at TopGolf specifically</p> <p>7 and give you a better answer. I can't answer that today.</p> <p>8 Q. How did professional soccer get approved?</p> <p>9 A. I'd have to go back and look and talk with</p> <p>10 general counsel to get a better answer for you.</p> <p>11 Q. Group fitness activities were originally</p> <p>12 prohibited and then they became approved. Do you know</p> <p>13 what happened to move them from the doghouse, to the</p> <p>14 approved list -- group fitness activities?</p> <p>15 A. I'd have to confer with general counsel.</p> <p>16 Q. What's the thinking that led the State to exile</p> <p>17 our college football and basketball teams, when no other</p> <p>18 state thought that was necessary?</p> <p>19 A. I'd have to confer with the Governor's office and</p> <p>20 general counsel.</p> <p>21 Q. How is the risk to those college students any</p> <p>22 less in these other states where the lockdown orders are</p> <p>23 not as restrictive? How is the risk to those students any</p> <p>24 less?</p> <p>25 A. Can you please rephrase the question?</p>	<p style="text-align: right;">67</p> <p>1 A. There's something known as "unmeasured</p> <p>2 confounding." You can't account for all factors and so I</p> <p>3 would not agree with you.</p> <p>4 Q. So it may be factors that are not considered --</p> <p>5 we can flip that coin then. So, then, you would say that</p> <p>6 factors that are not considered may be important?</p> <p>7 A. Sir, I feel that the question is very vague and</p> <p>8 not clearly expressed and I'm having a hard time answering</p> <p>9 it.</p> <p>10 Q. The process thus far is that these public health</p> <p>11 orders do not consider the potential harm or damage to the</p> <p>12 businesses that are being closed, right, so far?</p> <p>13 A. The public health orders are to contain or reduce</p> <p>14 the spread of COVID.</p> <p>15 Q. And the answer to my question is that, thus far,</p> <p>16 these public health orders have not considered any damage</p> <p>17 or cost to the businesses that are being ordered shut,</p> <p>18 right?</p> <p>19 MS. DUDLEY: Objection, form, foundation.</p> <p>20 A. The focus has been on improving the health of New</p> <p>21 Mexicans in keeping cases down.</p> <p>22 Q. (BY MR. ROGERS) And none of those considerations</p> <p>23 include considering the cost in damages to the businesses;</p> <p>24 is that correct?</p> <p>25 A. I don't know. In my time here, I don't know.</p>
<p style="text-align: right;">66</p> <p>1 Q. Yes. Somebody has decided to require that the</p> <p>2 state's football and basketball players -- and presumably</p> <p>3 spring sports is coming, too -- that they cannot</p> <p>4 operate -- cannot practice in the state and, therefore,</p> <p>5 they are practicing and playing games in Colorado, Utah,</p> <p>6 Nevada and Texas. How in the world, from a public health</p> <p>7 standpoint, does that make sense, since all of those</p> <p>8 states do not have the restrictive lockdown orders that we</p> <p>9 have?</p> <p>10 A. So I've been on this job for two months and I</p> <p>11 cannot go back and understand what happened before I</p> <p>12 arrived, but as of now, I could confer with general</p> <p>13 counsel to better understand the decision making.</p> <p>14 Q. In the public health world, would you agree with</p> <p>15 me, that if something is not taken into consideration in</p> <p>16 the decision to close businesses, it is not important?</p> <p>17 A. I -- please rephrase the question.</p> <p>18 Q. In the public health world, would you agree with</p> <p>19 me that if something is not taken into consideration in</p> <p>20 the decisions to close businesses, it is not important?</p> <p>21 A. I still don't understand the question.</p> <p>22 Q. Okay. In your decisions about shutdown, which</p> <p>23 businesses to shut or close and require to be closed -- if</p> <p>24 you do not consider a factor in that decision, that means</p> <p>25 that factor is not important, right?</p>	<p style="text-align: right;">68</p> <p>1 Q. Don't you think that that the cost in damages is</p> <p>2 something that's important to consider in these public</p> <p>3 health orders?</p> <p>4 A. The public health orders are really to keep New</p> <p>5 Mexico safe. That's the extent of DOH.</p> <p>6 Q. No matter -- no matter what the cost of damage?</p> <p>7 Is that correct?</p> <p>8 A. I wouldn't say that's correct. My focus as an</p> <p>9 M.D., is to look at the health and the outcomes in the</p> <p>10 state regarding cases, and so that is the focus of the</p> <p>11 public health orders.</p> <p>12 Q. Is there anyone that is supposed to look at the</p> <p>13 cost in damages to the businesses and people that are</p> <p>14 subject to these orders?</p> <p>15 A. I'm sure there are.</p> <p>16 Q. Do you know who they are?</p> <p>17 A. No, I do not.</p> <p>18 Q. And to the best of your knowledge, this is</p> <p>19 something that the Department of Health does not do, that</p> <p>20 is, consider the cost in damages to the people who are</p> <p>21 subject to these shutdown orders?</p> <p>22 A. We are in a historic time in this country in a</p> <p>23 pandemic and public health agencies are focused on health.</p> <p>24 And, no, I'm not aware of us being in the business of</p> <p>25 trying to address more of the economy at this point</p>

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1 because we have not had a pandemic in my lifetime.

2 MR. ROGERS: Can we go to Exhibit 7, please?

3 (Exhibit No. 7 marked for identification.)

4 Q. Have you had occasion to review the fatality

5 rates by age?

6 A. Not in the past six weeks or longer, actually.

7 Q. Even -- even generally, you're aware that

8 children from 5 to 14 have a very low fatality rate,

9 right?

10 A. In general, yes.

11 Q. And the fatality rate is actually lower than some

12 childhood diseases -- pneumonia, and so on, right, for

13 COVID?

14 A. To my knowledge for COVID, it's lower among

15 younger people.

16 Q. Right. Okay.

17 And -- and so the statistics -- these are -- this

18 chart is presented in a way that you're familiar with. So

19 for children from ages 5 to 14, the fatality rate is .001,

20 which means 1 out of every 100,000 diagnosed with COVID,

21 have died, right?

22 A. Correct.

23 Q. And teens have a fatality rate of .003, so 3 out

24 of 100,000 diagnosed with COVID, right?

25 A. From this chart, yes.

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1 Q. Okay. And that's consistent with your knowledge

2 about fatality rates in how younger -- younger people are

3 less susceptible to fatalities from COVID, right?

4 A. Correct.

5 Q. And you don't agree that child obesity is a

6 pandemic in the U.S. and much of the world now?

7 A. I didn't say I didn't agree that it's an issue.

8 Your question was to COVID and obesity, as cause and

9 effect.

10 Q. Okay. You'd agree that childhood obesity is a

11 serious problem?

12 A. Yes.

13 MR. ROGERS: And could I have Exhibit 8,

14 please?

15 (Exhibit No. 8 marked for identification.)

16 Q. Exhibit 8 is a Tufts' study, the pandemic and the

17 childhood weight gain. And on page 2, it indicates, "One

18 in three of all U.S. children have problems with

19 overweight or obesity." Is that consistent with your

20 understanding of the problem?

21 A. I know obesity is a huge problem in our country,

22 so that seems to be consistent.

23 Q. This analysis says that there's emerging evidence

24 that -- concerning the impact of COVID on weight-related

25 behaviors. And on page 3, it says, "Past research has

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1 shown time out of school, like summer vacation, tends to

2 be associated with a higher level of weight gain. That

3 may be because the kids are at home, they don't have

4 physical activity opportunities like recess or PE classes

5 or access to school meals, which need to meet certain

6 federal nutritional guidelines."

7 It says, "On the other hand, they may have more

8 opportunities for things like unhealthy snacking or

9 sedentary activities which tend to be associated with

10 greater weight gain." This study suggests that the same

11 thing may be happening now due to the pandemic. That

12 seems to make sense, does it not, Dr. Collins?

13 MS. DUDLEY: Objection, form.

14 A. Can you clarify, what seems to make sense?

15 Q. (BY MR. ROGERS) That the pandemic is going to

16 cause greater weight gain.

17 MS. DUDLEY: Objection, foundation.

18 A. I don't have data to say that.

19 Q. (BY MR. ROGERS) You -- you can't -- you do not

20 believe that the COVID-19 is going to have an adverse

21 impact on childhood weight gain?

22 A. I do not have data to show that.

23 Q. Okay. So, therefore, if you don't have data,

24 then you can't conclude that the COVID-19 is going to

25 cause greater weight gain?

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1 A. I can speculate that I think it might.

2 Q. It would sure be likely, wouldn't you guess?

3 A. I'd rather not guess.

4 Q. So if you don't have any data that suggests

5 trampoline gyms are any more risky than gyms, why does the

6 Department of Health place them in the category and

7 prohibit their opening?

8 A. We have data on transmissibility of COVID, which

9 is through droplets and through aerosolization, and masks

10 help that. And so, from that, we can infer what is a safe

11 activity relative to keeping people from catching COVID,

12 which is mask wearing, hand washing and distancing.

13 Q. And you assume that masks cannot be worn safely

14 on a trampoline?

15 A. To my knowledge, they cannot be.

16 Q. Do you have any data or study that leads you to

17 that conclusion, to put these businesses out of business

18 and these employees out of work?

19 A. No actual studies, no.

20 Q. Physical activity is important for children for

21 many reasons, right?

22 A. Correct.

23 Q. And it improves children's cardiometabolic

24 markers, like blood pressure and cholesterol profiles,

25 right?

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73	<p>1 A. I am not a pediatric researcher. I work on the</p> <p>2 other end of the age spectrum, but if I were to read the</p> <p>3 literature I could give you more of a confirmative answer.</p> <p>4 Q. And you understand there's evidence of benefits</p> <p>5 of children exercising, such as assisting in sleep,</p> <p>6 stress, self-confidence, mood, and even cognition in</p> <p>7 academic performance?</p> <p>8 A. I'm aware of its benefit for adults. I'm an</p> <p>9 internal medicine doctor, so I don't take care of children</p> <p>10 and I don't consistently read the literature on children.</p> <p>11 Q. Do you have any reason to believe that exercise</p> <p>12 doesn't improve all of these factors for children?</p> <p>13 A. It's not a matter of not having a reason to</p> <p>14 believe, it's just I haven't reviewed the data.</p> <p>15 MR. ROGERS: Exhibit 9, please.</p> <p>16 (Exhibit No. 9 marked for identification.)</p> <p>17 Q. Has the State studied this issue, indicated here</p> <p>18 on the underlined part: For many children who already</p> <p>19 struggled with their weight before corona virus, the</p> <p>20 pandemic has led them to backslide? Has there been any</p> <p>21 consideration of the impacts on children by the pandemic?</p> <p>22 A. I am not aware of any studies.</p> <p>23 Q. That would be an appropriate thing for a public</p> <p>24 health department, would it not, to address childhood</p> <p>25 problems of obesity and weight gain or so on, either both</p>	75	<p>1 such as type 2 diabetes, high blood pressure, high</p> <p>2 cholesterol and sleep apnea, I'd just like that on the</p> <p>3 record. Okay?</p> <p>4 MS. DUDLEY: Dr. Collins, you may answer if</p> <p>5 you can.</p> <p>6 A. Yes. So the link between obesity and such things</p> <p>7 as type 2 diabetes and high blood pressure has been</p> <p>8 established. And definitely for me as an internal</p> <p>9 medicine doctor, not a pediatrician, I see that link. I</p> <p>10 have not studied this in children and that really defers</p> <p>11 to someone who's in pediatrics. And, yes, I'm a public</p> <p>12 health practitioner, but at this point, I'm speculating.</p> <p>13 Q. (BY MR. ROGERS) Do you think it's worth risking</p> <p>14 permanent damage to children's physical health so as to</p> <p>15 avoid a .001 percent chance that a child age 14 or under</p> <p>16 might die from COVID?</p> <p>17 A. Sir, when you think about the risks of COVID and</p> <p>18 the fact that there's a low mortality among children,</p> <p>19 there is the asymptomatic transmission of a carrier, a</p> <p>20 child taking it home to their parents and we have to be</p> <p>21 cautious about that.</p> <p>22 Q. Do you have any statistics on that?</p> <p>23 A. Not in front of me, I do not.</p> <p>24 Q. Do such -- has the State studied that</p> <p>25 transmission route?</p>
74	<p>1 before and after the pandemic?</p> <p>2 A. Like many other questions it will have, it</p> <p>3 certainly has merit.</p> <p>4 Q. And children who fall into the obese category</p> <p>5 will go on to have some severe conditions, such as -- or</p> <p>6 excuse me, may go on to have severe health conditions,</p> <p>7 such as type 2 diabetes, high blood pressure, high</p> <p>8 cholesterol and sleep apnea, right?</p> <p>9 A. The keyword there, sir, is "may."</p> <p>10 Q. Do you have any reason to believe that the</p> <p>11 pandemic will make these outcomes and these problems</p> <p>12 better?</p> <p>13 A. Without seeing data, I don't know.</p> <p>14 Q. You can't venture a guess on that, Doctor?</p> <p>15 MS. DUDLEY: Objection, form, foundation.</p> <p>16 MR. ROGERS: What's wrong with the form?</p> <p>17 MS. DUDLEY: The witness has stated several</p> <p>18 times that she needs the data. It's been asked and</p> <p>19 answered, sir.</p> <p>20 MR. ROGERS: I'm asking her as a -- as a</p> <p>21 doctor, if she has a reasonable assumption about these</p> <p>22 matters.</p> <p>23 And if she -- if she's unable to testify under</p> <p>24 oath that people who fall -- children who fall in the</p> <p>25 obese category may go on to have severe health conditions,</p>	76	<p>1 A. There have been -- there has been national</p> <p>2 looking at asymptomatic transmission. That's the reason</p> <p>3 for being concerned about activities and making sure that</p> <p>4 we try and contain the virus with distancing, mask wearing</p> <p>5 and hand washing.</p> <p>6 Q. But the State is now behind opening up schools,</p> <p>7 right?</p> <p>8 A. Yes.</p> <p>9 Q. But -- but you don't think the State should</p> <p>10 support additional opportunities for exercise for these</p> <p>11 same kids, at a trampoline gym that is requiring masks,</p> <p>12 social distancing and other safety procedures?</p> <p>13 A. The data that we have around the protection or</p> <p>14 the limited risk that we have with schools reopening, with</p> <p>15 best practices enforced, as well as with surveillance</p> <p>16 test, is the rationale for opening schools -- one of them.</p> <p>17 Q. How does that differ from allowing -- joining the</p> <p>18 other 49 states and allowing trampoline gyms in New Mexico</p> <p>19 to open and provide exercise for kids who, A, do not seem</p> <p>20 to -- do not seem to test positive and do not have any --</p> <p>21 do not have a significant fatality, if they do, in fact,</p> <p>22 contract it? How is it different?</p> <p>23 A. Can you rephrase the question, please?</p> <p>24 Q. I'll start over. How is that decision different</p> <p>25 from the decision to allow gyms -- trampoline gyms to</p>

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<p style="text-align: right;">77</p> <p>1 provide exercise opportunities for children -- with 2 COVID-safe practices? 3 A. The school reopening is based on getting 4 students -- children back to learning and to knowing that 5 we can do so safely. I don't have data on trampoline 6 parks. 7 Q. And would it be safe to say you have no plans to 8 acquire that data? 9 A. That's not safe to say. In two months in this 10 role there's a lot to be done, and right now we have 11 vaccine rollout. 12 Q. At least now there are no present plans to study 13 that risk factor and compare it to the decision that 14 allowed the State to open schools; would that be correct? 15 A. As of today, there are no plans. 16 MR. ROGERS: Exhibit 10, please. 17 (Exhibit No. 10 marked for identification.) 18 Q. This is from the CDC from August 14th of 2020. 19 And the CDC at page 1 notes that symptoms of anxiety 20 disorder and depressive disorder increased considerably in 21 the United States during April through June 2020 compared 22 with the same period in 2019. 23 Does that allow you any more confidence in 24 concluding that the pandemic is causing additional anxiety 25 disorder and depressive disorder?</p>	<p style="text-align: right;">79</p> <p>1 A. I don't know the external validity of this study 2 that you're showing me. I don't see the journal where 3 it's published. I don't see the tables, so I cannot come 4 to that conclusion. 5 Q. Does that help you any? I think it's from the -- 6 A. The Morbidity and Mortality Weekly Report, it's 7 reliable, but I still have not looked at this data closely 8 and where they collected the data. 9 MS. DUDLEY: And, Counsel, just for the 10 record, you provided us 16 exhibits about 45 minutes 11 before the deposition so nobody has had time to review 12 these. 13 MR. ROGERS: Well, I look forward to any 14 suggestion that the pandemic is improving mental health or 15 some expert that wants to testify to that and that the 16 pandemic is not adversely increasing public health. 17 I'll -- I'll receive that at any time, day or night. 18 Let's see if we can continue here. 19 Q. (BY MR. ROGERS) The CDC -- this report published 20 in the CDC indicates that one adverse mental or behavioral 21 health symptom was reported by more than one-half of the 22 respondents. Do you see that on the right-hand side, 23 Dr. Collins? 24 A. Why don't you place the cursor over it or 25 someone? Thank you. Yes, I do see that.</p>
<p style="text-align: right;">78</p> <p>1 A. What you're showing me now, these sentences 2 you've underlined would suggest yes. 3 Q. Okay. Do you have any information that suggests 4 this is not correct? 5 A. I would have to review this in detail to give you 6 a better answer. 7 Q. As you sit there at this time, do you have any 8 information that would suggest that anxiety disorder and 9 depressive disorder are not being caused -- increases in 10 anxiety disorder and depressive disorder are not being 11 caused by the pandemic? 12 A. Can you rephrase the question, please? 13 Q. Yes. Do you have any information that suggests 14 that the increase in anxiety disorder and depressive 15 disorder is not being caused by the pandemic? 16 A. I don't have any information. 17 Q. Okay. And the next underlined part indicates 18 increases in persons seriously considering suicide. Do 19 you see that? 20 A. One second. 21 I see the seriously considered suicide, I see 22 that. 23 Q. Right. And so you would agree that the pandemic 24 is -- is increasing the persons that are seriously 25 considering suicide, would you not?</p>	<p style="text-align: right;">80</p> <p>1 Q. Do you have any reason to doubt that? 2 A. When I'm reviewing the literature, I look at the 3 characteristics of the folks from who they collected the 4 data, and that helps me and informs me as to how I deliver 5 care and if it's generalizable to my population. And all 6 I see here are numbers from little paragraphs and I don't 7 have the full article or the opportunity to have reviewed 8 it. 9 Q. Okay. Let's go to Exhibit 11. 10 (Exhibit No. 11 marked for identification.) 11 Q. In Exhibit 11, Dr. Stuart Brown, at page 3, 12 states: Sustained, moderate to severe play deprivation 13 particularly during the first 10 years of life appeared 14 linked to major varied but virtually omnipresent emotional 15 dysregulation; that is, increased prevalence of 16 depression, a tendency to become mired in rigid inflexible 17 perceptions of options available for adoption, diminished 18 impulse control, less self regulation, increased addictive 19 predilection, diminished management of aggression and 20 fragility and shallowness of enduring interpersonal 21 relationships. Do you agree with that? 22 A. On what data is this summary based? 23 Q. As a -- as a general proposition of medicine, you 24 don't agree that sustained moderate severe play 25 deprivation will adversely affect children?</p>

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82	<p>1 Q. You're not aware of any, correct -- any 2 consideration of the impact of moderate to severe play 3 deprivation? 4 A. I'm not aware of that as of today. 5 Q. Are the -- do you anticipate that the shutdown 6 orders and the effort to -- and the effort to address the 7 COVID-19 pandemic is going to continue until the risk is 8 zero? 9 A. Those decisions are in progress. 10 Q. So that's a possibility, that the public health 11 orders are going to continue until the risk from COVID-19 12 is zero? 13 MS. DUDLEY: Objection, seeks privileged 14 information protected by executive privilege. I'm going 15 to ask the secretary not to answer this question. 16 MR. ROGERS: Okay. 17 Q. (BY MR. ROGERS) Well -- let me -- let me see if 18 I can rephrase that. I don't want any of your discussions 19 with the governor or the governor's counsel. 20 Have you any knowledge as to where this is going 21 to end? Are the public health orders going to continue 22 until the risk is zero? 23 A. I cannot answer that question. 24 Q. So it's possible that the State of New Mexico and 25 the public health orders is going to keep trampoline gyms</p>	84	<p>1 A. I'd have to review the literature. 2 Q. Okay. 3 MR. ROGERS: How about Exhibit 13? 4 (Exhibit No. 13 marked for identification.) 5 Q. Has anyone at the Department of Health, to your 6 knowledge, undertaken any consideration of the health 7 benefit of trampolines, to either children or adults? 8 A. I'm not aware of any studies. 9 Q. Do you agree that considering the health benefits 10 to children and -- and adults, from trampolining, should 11 be something that is considered when trying to determine 12 whether or not trampoline gyms are shut down? 13 A. The shutdown orders are based on keeping New 14 Mexico safe. 15 Q. Are they -- and so, no other considerations are 16 valid in your mind if -- if -- if the shutdown order -- 17 excuse me. 18 So, no other factors are valid to consider in 19 determining shutdown orders, except how -- how the 20 department or other experts conclude the COVID risk can be 21 reduced? 22 A. The public health orders are based on reducing 23 transmission and replication of this virus that has taken 24 many lives, and that's the focus of the public health 25 orders is to reduce cases.</p>

85	<p>1 Q. Okay. And -- and so I hate to beat a dead horse, 2 but -- and that means without regard to the health -- 3 without regard to any adverse health impacts on children 4 or adults, or adverse economic impacts on businesses or 5 employees, correct? 6 MS. DUDLEY: Objection, form. 7 A. We're keeping people alive and out of the 8 hospital. 9 MR. ROGERS: Exhibit 13, please. 10 MR. ARTUSO: This is 14. Did you mean 14? 11 MR. ROGERS: I'm certain that I did. 12 MR. ARTUSO: Okay. 13 (Exhibit No. 14 marked for identification.) 14 Q. (BY MR. ROGERS) This is a research of -- this is 15 from the Research Quarterly for Exercise and Sport. I'm 16 going to guess that you have no opinion as to whether 17 trampoline training can be effective as resistance 18 training for improving knee muscle strength and dynamic 19 balance in young men and women; would that be correct? 20 A. Yes, I have not reviewed the literature. 21 Q. Do you have any -- you don't have an opinion as a 22 doctor, that -- that trampoline training is likely to be 23 effective and improve knee muscle strength and dynamic 24 balance? You -- you -- you can't get there, I take it, 25 from your background and experience in public health?</p>	87	<p>1 working definition of "recreation" that's the term that's 2 in your public health orders? 3 A. Leisure time. 4 Q. Would it include -- there's one definition here, 5 refreshment of one's mind or body after work, through 6 activity that amuses or stimulates, play? Would that be 7 an acceptable definition from recreation? 8 A. That's not the definition I would use. I would 9 use the term leisure time activity for recreation. 10 Q. Can leisure time activity include sports? 11 A. Yes, it can. 12 Q. The City of Albuquerque has recreational 13 basketball leagues, they've got flag football, soccer and 14 so on. So recreation certainly includes sports, right? 15 A. It can, yes. 16 Q. And the definition of "gym," what is your 17 understanding of a gym? 18 A. A place where you go to exercise. 19 Q. Can you get exercise at a trampoline facility? 20 A. Based on what you've shared, it sounds like you 21 can, yes. 22 Q. Bless you, Dr. Collins. 23 MS. DUDLEY: Counsel, if it's all right, 24 could we take a quick break? We've been going over an 25 hour now.</p>
86	<p>1 A. I do not have knowledge of the literature. I'd 2 have to review it. 3 Q. We've provided a collection of studies of some 4 things and perhaps when someone gets a chance, it would be 5 appreciated if those would be reviewed. 6 Let me -- let me turn to another topic here. The 7 public health orders that you are now responsible for 8 include the word "recreation" in them. Would you agree 9 that recreation is an imprecise term? 10 A. Can you define "imprecise?" Sorry to be so 11 concrete. 12 Q. Well, not accurate, ambiguous, susceptible of 13 several meanings. 14 A. Okay. This has been a long session. Please 15 rephrase the question. 16 Q. Would you agree that recreation is an imprecise 17 term? 18 A. I don't know that that's relevant, but it has a 19 definition. 20 Q. Well, where is that definition? Is it in the 21 public health order? 22 A. No, it is not in the public health order. The 23 recreation piece? I'm not aware that it's actually 24 spelled out in the public health orders. 25 Q. What then is your assumption -- what's your</p>	88	<p>1 MR. ROGERS: Yes. 2 Q. (BY MR. ROGERS) Let me -- let me -- before we 3 break, are there any answers you'd like to change at this 4 time, Dr. Collins? 5 A. I do not have a list of all of the questions we 6 spent the last nearly three hours going over, so right now 7 I don't know of any that I want to change. 8 MR. ROGERS: Thank you. Let's take a short 9 break. What did you want, Ms. Dudley, five minutes? Ten 10 minutes? 11 MS. DUDLEY: Let's -- let's do ten minutes, 12 if you don't mind, please. 13 MR. ROGERS: Okay. Very good. Ten minutes. 14 MS. DUDLEY: Thank you. 15 VIDEOGRAPHER: We are now off the record. 16 The time is 4:57. 17 (Recess taken from 4:57 p.m. to 5:11 p.m.) 18 VIDEOGRAPHER: We are back on the record. 19 The time is 5:11. 20 Q. (BY MR. ROGERS) Dr. Collins, are there any 21 questions that you'd like to -- excuse me. Any answers 22 that you'd like to change at this point? 23 A. No, not at this point. 24 Q. Okay. You have experience in education in the 25 specialized field of public health, correct?</p>

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89	<p>1 A. I have a Master's in Public Health, correct.</p> <p>2 Q. And that is important for this job that you've</p> <p>3 volunteered for, correct?</p> <p>4 A. Correct.</p> <p>5 Q. And if I understand your testimony, the decisions</p> <p>6 about -- about what businesses are in what category is, to</p> <p>7 the best of your knowledge, determined by the legal</p> <p>8 department; is that correct?</p> <p>9 A. The legal department working with whoever has</p> <p>10 served as secretary and now me, yes.</p> <p>11 Q. Is there a written trail for those decisions?</p> <p>12 Are there memos and analyses and so on that resulted in</p> <p>13 the various definitions that are now appearing in the</p> <p>14 public health orders?</p> <p>15 A. I don't know.</p> <p>16 Q. Do any of the attorneys involved have any</p> <p>17 specialized education in public health?</p> <p>18 A. I don't know.</p> <p>19 Q. Let me -- let me read to you from the June 30th</p> <p>20 public health order. Page 6, paragraph 7. And the</p> <p>21 definition for close-contact recreational facilities in</p> <p>22 the June 30th public health order, provided that</p> <p>23 government employees would be allowed access to the</p> <p>24 close-contact recreational facilities.</p> <p>25 The close-contact recreational facilities at that</p>	91	<p>1 are prohibited to nongovernmental employees.</p> <p>2 Can you imagine any justification for government</p> <p>3 employees being allowed those activities and to attend</p> <p>4 those businesses and citizens not being allowed?</p> <p>5 A. I'd have to confer with general counsel to</p> <p>6 understand the decision making.</p> <p>7 Q. Does it make sense to you?</p> <p>8 A. I actually would feel better conferring with</p> <p>9 general counsel to get a better understanding.</p> <p>10 Q. Can you think of any reasoning that governmental</p> <p>11 employees should be treated in that fashion, and citizens</p> <p>12 should not have access to these same opportunities? I</p> <p>13 mean, any reason under the sun, that government employees</p> <p>14 should exempt themselves from these restrictions</p> <p>15 applicable to everyone else?</p> <p>16 A. I'd have to go back and visit with those who made</p> <p>17 that decision and understand the definition.</p> <p>18 Q. So as we sit here, you think there may be a</p> <p>19 justification for allowing government employees to attend</p> <p>20 adult entertainment venues and so on, movie theaters,</p> <p>21 bowling alleys and so on, and keeping nongovernmental</p> <p>22 people out? You think there may be a reason for that?</p> <p>23 MS. DUDLEY: Objection, form.</p> <p>24 A. So I'd need to understand what was the</p> <p>25 justification for that decision.</p>
90	<p>1 time was defined as adult entertainment venues,</p> <p>2 performance venues, amusement parks, go-kart courses,</p> <p>3 miniature golf courses, bowling alleys, movie theaters,</p> <p>4 museums, amusement parks, concert events, or "other places</p> <p>5 of indoor recreation or indoor entertainment."</p> <p>6 As a public health official, can you imagine any</p> <p>7 reason that government employees would exempt themselves</p> <p>8 and allow government employees to attend adult</p> <p>9 entertainment venues, performance venues, amusement parks,</p> <p>10 go-kart courses, miniature golf courses, bowling alleys,</p> <p>11 movie theaters, museums and amusement parks, concert</p> <p>12 events or other places of indoor recreation or indoor</p> <p>13 entertainment, and the public would not?</p> <p>14 MS. DUDLEY: Objection, form.</p> <p>15 A. Sir, could you please rephrase that very long</p> <p>16 question?</p> <p>17 Q. (BY MR. ROGERS) Yes. The crux of this question</p> <p>18 is government employees, maybe the lawyers. Who knows?</p> <p>19 They exempted government employees from the</p> <p>20 restrictions applicable to everyone else. So in the</p> <p>21 definition of close-contact recreational facilities, June</p> <p>22 30th public health order, page 6, paragraph 7, they</p> <p>23 allowed all government employees to access adult</p> <p>24 entertainment venues, performance venues, amusement parks,</p> <p>25 and the long list of other businesses and activities that</p>	92	<p>1 Q. (BY MR. ROGERS) And can you answer my question?</p> <p>2 So that you believe that there may be a rational answer as</p> <p>3 to why government employees treat themselves better than</p> <p>4 the citizens that they're prohibiting from these same</p> <p>5 spots? You think it's possible there's a reason?</p> <p>6 MS. DUDLEY: Objection, form.</p> <p>7 A. I think there's a justification that I don't</p> <p>8 understand as of right now.</p> <p>9 Q. (BY MR. ROGERS) Okay. And here's the -- here's</p> <p>10 the definition here: "Recreational facilities include</p> <p>11 indoor movie theaters, museums, bowling alleys, miniature</p> <p>12 golf, arcades, amusement parks, concert venues, event</p> <p>13 venues use, performance venues, go-kart courses, adult</p> <p>14 entertainment venues and other places of indoor recreation</p> <p>15 or indoor entertainment." And it says, "Recreational</p> <p>16 facilities do not include those venues being utilized for</p> <p>17 governmental functions."</p> <p>18 And you're telling me that you are going to have</p> <p>19 to consult with general counsel or somebody as to what the</p> <p>20 basis for that exception might be; is that correct?</p> <p>21 A. That's what I'm saying, yes.</p> <p>22 Q. So -- so as we sit here, you're of the opinion</p> <p>23 that there may be an explanation for treating government</p> <p>24 employees more favorable than nongovernmental employees;</p> <p>25 is that correct?</p>

<p style="text-align: right;">93</p> <p>1 MS. DUDLEY: Objection, form.</p> <p>2 A. I believe there's an explanation that I don't</p> <p>3 know of at this point.</p> <p>4 Q. (BY MR. ROGERS) And so you're not bothered by</p> <p>5 this exception?</p> <p>6 A. Can you rephrase that?</p> <p>7 Q. Yeah. Is this exception for governmental</p> <p>8 employees to enjoy all of these things that are prohibited</p> <p>9 to everybody else in New Mexico, that doesn't bother you</p> <p>10 as a -- as a government official?</p> <p>11 A. I'd like to better understand "governmental</p> <p>12 functions" and get more of an explanation of that.</p> <p>13 Q. So it may be okay, I guess, depending on what you</p> <p>14 find out? Is that correct?</p> <p>15 A. I would need to understand more about the</p> <p>16 justification.</p> <p>17 Q. What possibly could justify that, Dr. Collins?</p> <p>18 A. I wouldn't know until I got more information.</p> <p>19 Q. You think there is more information to justify</p> <p>20 that?</p> <p>21 A. That's what I'd have to find out, Mr. Rogers.</p> <p>22 Q. Thank you.</p> <p>23 Do you know if any analysis or study was</p> <p>24 performed prior to the decision to take gyms from the</p> <p>25 prohibited list and put them in the close-contact business</p>	<p style="text-align: right;">95</p> <p>1 A. General counsel is helping to inform what I</p> <p>2 approve now in my current role.</p> <p>3 Q. Is there anyone else that you would want to check</p> <p>4 with to find out about the process and that decision</p> <p>5 making process?</p> <p>6 A. Per the guidance of general counsel, there could</p> <p>7 be, for sure.</p> <p>8 Q. Are you aware of any study that suggests barber</p> <p>9 shops, hair salons, gyms, group fitness classes, tattoo</p> <p>10 parlors, nail salons, spas, massage parlors, tanning</p> <p>11 salons, guided raft tours, guided balloon tours, bowling</p> <p>12 alleys, ice skating rinks and personal training services</p> <p>13 present any less risk than trampoline gyms?</p> <p>14 A. I'm not aware of any studies.</p> <p>15 Q. Okay. Is there any area or questions you were</p> <p>16 concerned with prior to the deposition that I've not asked</p> <p>17 you about?</p> <p>18 A. No.</p> <p>19 Q. Is there any area or questions that you thought I</p> <p>20 might ask before your deposition, that I have not asked?</p> <p>21 A. No.</p> <p>22 Q. Is there anything else that you can tell me that</p> <p>23 I can convey to my clients as to the explanation for</p> <p>24 trampoline gyms not being treated as gyms?</p> <p>25 A. I don't have any additional information.</p>
<p style="text-align: right;">94</p> <p>1 list?</p> <p>2 A. I don't know of any studies.</p> <p>3 Q. Do you know if any study was performed that</p> <p>4 resulted in group fitness classes moving from prohibited</p> <p>5 to the close-contact business category?</p> <p>6 A. I don't know of any studies.</p> <p>7 Q. Do you know of any study that was conducted that</p> <p>8 moved ice skating rinks and bowling alleys from the</p> <p>9 prohibited to the close-contact business category?</p> <p>10 A. I don't know of any studies.</p> <p>11 Q. Do you know of any study that was performed to</p> <p>12 move personal trainers from the prohibited to the</p> <p>13 close-contact business category?</p> <p>14 A. I don't know of any studies.</p> <p>15 Q. Do you know what the process is to move</p> <p>16 industries and businesses from the prohibited category to</p> <p>17 the close-contact business category?</p> <p>18 A. Can you please rephrase that question?</p> <p>19 Q. Yes. What is the process whereby these</p> <p>20 industries and these activities get out of the doghouse</p> <p>21 and into the close-contact business category?</p> <p>22 A. I would need to review more with general counsel</p> <p>23 about that.</p> <p>24 Q. Okay. So it's general counsel, to your</p> <p>25 knowledge, that's making those decisions?</p>	<p style="text-align: right;">96</p> <p>1 MR. ROGERS: Okay. Can we take just a</p> <p>2 minute? I think we're done. Well, that's lawyer speak,</p> <p>3 for four minutes.</p> <p>4 MS. DUDLEY: Certainly.</p> <p>5 VIDEOGRAPHER: We are off the record. The</p> <p>6 time is 5:24.</p> <p>7 (Recess taken from 5:24 p.m. to 5:28 p.m.)</p> <p>8 VIDEOGRAPHER: We are back on the record.</p> <p>9 The time is 5:28.</p> <p>10 Q. (BY MR. ROGERS) Dr. Collins, if it turns out</p> <p>11 that it is entirely possible to jump on a trampoline</p> <p>12 without causing the mask to fall off, would the department</p> <p>13 consider treating and allowing -- excuse me. Would the --</p> <p>14 would the department allow trampoline gyms to operate</p> <p>15 under the same conditions that gyms operate?</p> <p>16 A. I'd have to go back and review with counsel how</p> <p>17 we've come to this decision to give you a good answer.</p> <p>18 Q. Let me help you a little bit, because we had sent</p> <p>19 a collection of public inspections -- a public records</p> <p>20 request and we asked for the basis of the decision to put</p> <p>21 trampoline gyms in the prohibited category. And the</p> <p>22 answer was, there's nothing. There was no study, no</p> <p>23 analysis, no consideration. They appeared there. Okay?</p> <p>24 And does that help you answer the question, if we</p> <p>25 can establish that -- if there is -- if there is no study,</p>

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98	<p>1 indicated that the decisions are -- and the governor has 2 time and time again talked about how the decisions are 3 data-driven and a matter of science.</p> <p>4 If it is a matter of science that there are no 5 reported cases of transmission, that is not a significant 6 factor in your consideration, of placing trampoline gyms 7 in the same category as gyms?</p> <p>8 A. The data that they're looking at are rates of 9 cases in a county, it is not by a specific business.</p> <p>10 Q. Well, in this instance, it makes no difference 11 because there are no reports in the county, and there are 12 no reports in the state and there are no reports in 13 America. So the category doesn't matter, however you 14 split that; it's zero, right?</p> <p>15 A. The county level data -- go ahead, Ms. Dudley.</p> <p>16 MS. DUDLEY: That's all right. Go ahead and 17 answer if you can.</p> <p>18 A. The county level data that I'm referring to are 19 the number of cases in the county it's not by cases within 20 a business. So that is the data-driven component of the 21 decisions that predate me and that continues.</p> <p>22 Q. How does that square with the list of -- list of 23 businesses that are allowed to be open? How does that 24 square with that and the decision to allow nail 25 facilities, spas -- let me give you the list here to be</p>	100	<p>1 that variable is out, right? And if you come to the 2 conclusion that trampoline gyms can social distance, they 3 can -- they can wear masks and they can wash hands, why 4 are gyms open and trampoline gyms closed?</p> <p>5 A. I have not come to the conclusion that these 6 trampoline parks -- which I know very little about, other 7 than what I know as far as what you've explained -- that 8 they actually can distance and that they can keep their 9 mask on.</p> <p>10 Q. And you've explained that you're not aware of any 11 study or any basis for that opinion, it's just you're 12 uncertain; is that correct?</p> <p>13 A. That's what I said earlier, I'm not aware of any 14 studies, that's correct.</p> <p>15 Q. Okay. Just -- just one last question. So as we 16 sit here today, you have no knowledge that the cost in 17 damages of these public health orders have ever been 18 considered by the State of New Mexico; is that correct?</p> <p>19 A. I'm not aware that they've been taken into 20 account since I've been on my role here as secretary.</p> <p>21 Q. Okay. How do -- how do massage parlors social 22 distance?</p> <p>23 A. You would have to find out, but it's a public 24 health order.</p> <p>25 Q. They can't social distance, can they,</p>

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101	<p>1 Dr. Collins?</p> <p>2 MS. DUDLEY: Objection, form.</p> <p>3 A. They can wear the mask.</p> <p>4 Q. (BY MR. ROGERS) And you could wear a mask at the</p> <p>5 trampoline gym, so that's not a distinguishing feature,</p> <p>6 right? And the same questions for barber shops. You</p> <p>7 can't social distance at a barber shop, a nail salon, a</p> <p>8 beauty parlor, a spa, or any of those, right? So that's</p> <p>9 not a -- that's not a reason to -- to close these</p> <p>10 businesses down and put their employees on the</p> <p>11 unemployment line, is it?</p> <p>12 MS. DUDLEY: Objection, form.</p> <p>13 A. I feel like I'm being led to a certain answer and</p> <p>14 I'm uncomfortable answering your question.</p> <p>15 Q. (BY MR. ROGERS) Well, yes, you are being led to</p> <p>16 a conclusion. And it's -- it's an absolutely rational</p> <p>17 one. And I'm going to request an answer, even if you're</p> <p>18 uncomfortable giving it, because it does not make sense.</p> <p>19 Many of these entities don't social distance at all and</p> <p>20 yet they're allowed. So that can't be the defining</p> <p>21 criteria, can it?</p> <p>22 A. I would have to go back to general counsel and</p> <p>23 discuss this further and come back with an answer for you.</p> <p>24 Q. Do any of those persons in general counsel have</p> <p>25 any education or experience in public health? They're</p>	103	<p>1 difficulties. I have no more questions for Dr. Collins.</p> <p>2 MS. DUDLEY: Mr. Rogers, we just went off the</p> <p>3 record so let's go back on the record and you can say it</p> <p>4 again. Is that all right?</p> <p>5 MR. ROGERS: Yep.</p> <p>6 MS. DUDLEY: Okay. Perfect.</p> <p>7 Mr. Videographer, if you please.</p> <p>8 VIDEOGRAPHER: Yep, one moment. We are back</p> <p>9 on the record. The time is 5:44.</p> <p>10 MR. ROGERS: Sorry for the technical</p> <p>11 interruption and thank you for your patience, Dr. Collins.</p> <p>12 I have no more questions.</p> <p>13 MS. DUDLEY: We will read and sign. Four to</p> <p>14 a page Etran and my office would also like a copy of this</p> <p>15 video as well.</p> <p>16 VIDEOGRAPHER: Okay. We are now off the</p> <p>17 record. The time is 5:45.</p> <p>18 (Deposition concluded at 5:45 p.m.)</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
102	<p>1 just lawyers, aren't they?</p> <p>2 A. You've asked me this question before, and I have</p> <p>3 not looked at the CVs of each person in the general</p> <p>4 counsel at DOH.</p> <p>5 MR. ROGERS: All right. Well, Dr. Collins, I</p> <p>6 appreciate your extreme patience and I hope that you</p> <p>7 understand -- I think you do -- that -- how important this</p> <p>8 is to my clients. They're -- they are having to address</p> <p>9 serious financial economic issues. They're having to</p> <p>10 address a collection of the impacts of that. They have to</p> <p>11 fire employees. They have to put people on the</p> <p>12 unemployment line and the -- and the current guidelines,</p> <p>13 all the way down to green, they don't allow them to open</p> <p>14 whatsoever. And so, there is no daylight here under the</p> <p>15 present system and I would respectfully --</p> <p>16 (Video and audio of Mr. Rogers stopped.)</p> <p>17 MR. ARTUSO: Pat, you cut out.</p> <p>18 MS. DUDLEY: Mr. Artuso, is it okay if we go</p> <p>19 off the record while we're waiting for Mr. Rogers to join</p> <p>20 us?</p> <p>21 MR. ARTUSO: Sure.</p> <p>22 VIDEOGRAPHER: We are now off the record.</p> <p>23 The time is 5:41.</p> <p>24 (Recess taken from 5:41 p.m. to 5:44 p.m.)</p> <p>25 MR. ROGERS: I apologize. Some technical</p>	104	<p>1 IN THE UNITED STATES DISTRICT COURT</p> <p>2 FOR THE DISTRICT OF NEW MEXICO</p> <p>3 ETP RIO RANCHO PARK, LLC,</p> <p>4 an Arizona Limited Liability Company;</p> <p>5 FAC-ABQ, LLC,</p> <p>6 a New Mexico Limited Liability Company;</p> <p>7 JUNGLE JAM, LLC,</p> <p>8 a New Mexico Limited Liability Company; and</p> <p>9 DUKE CITY JUMP, LLC,</p> <p>10 a New Mexico Limited Liability Company</p> <p>11 Plaintiffs,</p> <p>12 vs. Case No. 1:21-CV-00092 JB/KK</p> <p>13 MICHELLE LUJAN GRISHAM,</p> <p>14 in her official capacity as Governor</p> <p>15 of the State of New Mexico,</p> <p>16 TRACIE C. COLLINS, M.D.,</p> <p>17 in her official capacity as Secretary-Designate</p> <p>18 for the New Mexico Department of Health,</p> <p>19 TIM Q. JOHNSON,</p> <p>20 in his official capacity as Acting Cabinet Secretary</p> <p>21 for the New Mexico Department of Public Safety,</p> <p>22 Defendants.</p> <p>23 REPORTER'S CERTIFICATE</p> <p>24 I, THERESA E. DUBOIS, RPR, NM CCR #29, DO HEREBY</p> <p>25 CERTIFY that on February 19, 2021, the Zoom Video</p> <p>Conference Deposition of TRACIE C. COLLINS, M.D., was</p> <p>taken before me at the request of, and sealed original</p> <p>thereof retained by:</p> <p>For the Plaintiffs</p> <p>Patrick J. Rogers, Esq.</p> <p>Patrick J. Rogers, LLC</p> <p>20 First Plaza, Northwest, Suite 725</p> <p>Albuquerque, New Mexico 87102</p> <p>I FURTHER CERTIFY that copies of this</p> <p>Certificate have been mailed or delivered to all</p> <p>Counsel, and parties to the proceedings not</p> <p>represented by counsel, appearing at the taking of</p> <p>the Deposition.</p>

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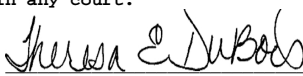
105

1 I FURTHER CERTIFY that examination of this
transcript and signature of the witness was
2 requested by the witness and all parties present.
3 On _____, a letter was mailed or delivered to
4 MARIA S. DUDLEY, ESQ., regarding obtaining signature of
the witness, and corrections, if any, were appended to the
original and each copy of the Deposition.

5
6 I FURTHER CERTIFY that the recoverable cost of the
original and one copy of the Deposition, including
7 exhibits, to PATRICK J. ROGERS, ESQ., is \$_____.

8 I FURTHER CERTIFY that I did administer the oath to
the witness herein prior to the taking of the Deposition;
that I did thereafter report in stenographic shorthand the
9 questions and answers set forth herein, and the foregoing
is a true and correct transcript of the proceeding had
10 upon the taking of this Deposition to the best of my
ability.

11
12 I FURTHER CERTIFY that I am neither employed by nor
related to nor contracted with (unless excepted by the
rules) any of the parties or attorneys in this case, and
13 that I have no interest whatsoever in the final
disposition of the case in any court.

14
15 
16 Theresa E. DuBois, RPR
New Mexico CCR #29
License Expires: 12/31/2021

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1 ETP RIO RANCHO PARK, et al., vs. LUJAN GRISHAM, et al.
2 SIGNATURE/CORRECTION PAGE
3 If there are any typographical errors to your
4 Deposition, please indicate them below.
5 PAGE LINE
6 _____ Change to _____
7 _____ Change to _____
8 _____ Change to _____
9 _____ Change to _____
10 _____ Change to _____
11

12 Any other changes to your Deposition are to be
listed below with a statement as to the reason
for such change:

PAGE	LINE	CORRECTION	REASON FOR CHANGE

19 I, TRACIE C. COLLINS, M.D., do hereby certify that I
20 have read the foregoing pages of my testimony as
transcribed, and that the same is a true and correct
21 record of the testimony given by me in this Deposition on
February 19, 2021, except for the changes made.

22
23
24 DATE SIGNED TRACIE C. COLLINS, M.D.
25

107

1 DATE DELIVERED/MAILED _____ RETURN BY _____
2 TRACIE C. COLLINS, M.D.
c/o MARIA S. DUDLEY, ESQ.
3 OFFICE OF THE GOVERNOR
490 Old Santa Fe, Suite 400
4 Santa Fe, New Mexico 87501
(505)476-2210
5 maria.dudley@state.nm.us
6 RE: ETP Rio Rancho Park, LLC, et al., vs. Michelle Lujan
Grisham, et al.
7 Deposition of: TRACIE C. COLLINS, M.D.
Date Taken: February 19, 2021
8
9 Dear Dr. Collins:
10
11 At the time of the above deposition/sworn statement,
12 it was requested that the deponent read and sign the
transcript.
13
14 Enclosed is your copy of the transcript with the
original signature page. Please ask the witness to
read the transcript and make any corrections on the
original signature page and return the original
signature page to our office.
15
16 DUE TO TRIAL IN THE MATTER BEING SET FOR
SIGNATURE MUST BE COMPLETED BY

17
18 Enclosed is a courtesy copy of the transcript with
the original signature page. Please read the
transcript and make any and all corrections to your
testimony that you feel are necessary and indicate
such corrections on the attached page. Please only
return the attached original signature page to our
office, not the transcript.
19
20 The deposition transcript is now ready to review in
our office. Please call (505)806-1202 to make
arrangements for reading and signing.
21
22 The transcript is now ready for review. Please
remit payment in the amount of \$_____. Your
transcript will be delivered as soon as payment is
received. If you choose not to pay, please contact
our office at (505)806-1202 to make arrangements for
reading and signing.
23
24
25

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1 Other: _____
2 Witnesses are provided 30 days from receipt of this
letter to read and sign the transcript. Failure to read
3 and sign within this time will result in the original
transcript being filed without the signature page.
4
5 Your immediate attention to this matter is
appreciated. If you have any questions, please call us at
(505)806-1202.
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8 ALBUQUERQUE COURT REPORTING
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