

FILED '23 JUN 22 PM4:14
MONTGOMERY CIRCUIT CT

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

ALABAMA ALWAYS, LLC,)
)
 Plaintiff,)
)
 v.)
)
 STATE OF ALABAMA MEDICAL)
 CANNABIS COMMISSION)
)
 Defendant.)

Case No. CV 2023-231

VERIFIED COMPLAINT

Plaintiff Alabama Always LLC (Alabama Always) states its verified complaint against Defendant State of Alabama Medical Cannabis Commission (the Commission) as follows:

Introduction

In 2021, the Alabama Legislature passed medical cannabis legislation, authorizing the creation of a purely intrastate health care market for medical cannabis with a limited number of licenses for entities to participate in one of six license categories: cultivator (12 licenses), processor (4 licenses), dispensary (4 licenses), secure transportation (unlimited licenses), state laboratory (unlimited licenses) or integrated (5 licenses); integrated allows the license holder to perform cultivation, processing, and retail. The medical cannabis legislation created the Commission and called for rigorous application requirements to ensure that Alabamians get the best cultivators, processors, dispensaries, transporters, and laboratories of medical cannabis.

On Monday, June 12, 2023, the Commission emerged from an hours-long executive session meeting and voted with no debate to accept a slate of applicants to be granted licenses. In fact, it was not clear to many observers that a vote was taken in public as opposed to execution session. The slate approved by the Commission consisted of the applicants that a group of anonymous "graders" or "scorers" had rated as scoring highest on a set of criteria

created by a third-party contractor. The Commission accepted the anonymous graders' scores without question, essentially rubber-stamping the graders' scoring sheets with no exceptions, and exercising no independent analysis or judgment.

By the end of the week after numerous complaints about obvious errors and inexplicable lapses by the scoring group, it had become clear to the Commission Members that blind trust in the scorers was misplaced. During an emergency meeting convened on Friday, June 16, the Commission issued an order "staying" the award of the licenses, citing "inconsistencies" in the scoring and warning of a "catastrophe" if the process were to continue by proceeding to award the licenses to the companies they voted for at their previous meeting. The Commission then announced its intention to salvage the process by engaging yet another third party to "audit" the scores produced by the anonymous graders.

There are two fundamental flaws with this plan. First, the Commission's present predicament is the result of its decision, apparently based on advice from staff and others, to abdicate its duty to exercise its own judgment, and its failure to use its own discretion to judge the merits of the applicants according to the criteria it adopted in its own regulations. The Commission is now being advised to continue to abdicate its duty by hiring yet another third party to grade the applications, which does nothing more than throw good money after bad. At the end of the day, it is the duty of the Commission Members, not some team of anonymous graders or a Big Four accounting firm, to review and assess the applicants for cannabis licenses and decide which applicants are best qualified to deliver medical cannabis to the people of Alabama who need these therapies whether they suffer from PTSD, opioid addiction, chronic pain, or the other maladies that medical cannabis is intended to treat.

The Commission is composed of highly-qualified professionals who were appointed because of their unique and extensive experience in a wide range of fields. They should be permitted to use their experience and judgment to make these important licensure decisions,

rather than being advised to base their decisions exclusively on a scores supplied by anonymous graders.

Second, it is far from certain that the Commission has the authority under its own Rules to order a stay, because the Rules appear to permit a stay only if an applicant has appealed the Commission's licensure decision or petitioned for an investigative hearing, and no applicant has yet done so. To be clear, Alabama Always agrees with the Commission that the licensure process should be stayed. But if the Commission's stay is found to be invalid, then it will do nothing to prevent the Commission's June 12 award of licenses from becoming final.

A related issue is the extended executive sessions ~~in~~ which the Commission uses whenever a significant decision is being made. This deprives the public and interested parties from any knowledge of or participation in the Commission's deliberations and deprive the public of any understanding of the basis for the decisions being made on the public's behalf. The Commission's rubber-stamp approval of the graders' slate of applicants on June 12 is but one example. The Open Meetings Act prohibits substantive discussions of business before public bodies during executive session, but the absence of public debate prior to a vote immediately following executive session raises questions.

Accordingly, for the reasons set forth below, Alabama Always respectfully requests that the Court enter an order (1) staying the Commission's June 12 award of licenses, (2) directing the Commission to do the job it is directed to do under Alabama law, which is to evaluate and review the applicants and their qualifications and exercise its own collective judgment regarding the award of licenses in open meetings that can be observed by the public; (3) requiring the Commission to not engage in substantive discussions regarding the award of licenses during executive session; and (4) permitting Alabama Always to engage in expedited discovery regarding the issues presented above.

Parties

1. Plaintiff Alabama Always is an Alabama limited liability company.
2. Defendant Commission is an Alabama administrative agency created to license entities to process, transport, test, or dispense medical cannabis in Alabama, among other things, and is subject to the Alabama Administrative Procedure Act.

Jurisdiction and Venue

3. Jurisdiction is appropriate in this Court pursuant to Alabama Code § 41-22-10 because Alabama Always brings this action to obtain declaratory and injunctive relief concerning a Commission rule. Jurisdiction is also proper under the Alabama Declaratory Judgment Act, which gives courts the “power to declare rights, status, and other legal relations whether or not further relief is or could be claimed.” Ala. Code § 6-6-222.
4. Venue is proper in this Court under Alabama Code § 41-22-10.

Facts

Medical Cannabis in Alabama

5. In 2021, the Alabama Legislature passed the Darren Wesley ‘Ato’ Hall Compassion Act (the Act), creating an entirely intrastate health care market for the production, processing, transportation, dispensation, testing, and use of medical cannabis.
6. The Act authorizes the Commission to regulate the medical cannabis market.
7. As part of its authority, the Commission may issue licenses to cultivate, transport, test, and sell/dispense medical cannabis in the State, including an “Integrated Facility” license that combines cultivation, processing, transport, and sale/dispensing of medical cannabis.
8. The Act specifies the number of each type of licenses that are available in Alabama, of which no more than five Integrated Facility licenses were to be awarded, to be awarded based upon merit, need, and other factors identified, generally and specifically, by

the Act and the Commission's rules and regulations.

9. The Commission adopted rules and regulations in accordance with the Alabama Administrative Procedure Act. Pursuant to these rules and regulations, the Commission established criteria for granting licenses.

10. Some of these criteria related to market and demographic conditions in Alabama and communities where facilities might be located, such as population, the anticipated number of qualified patients, market demand, unemployment, access to healthcare, and infrastructure. *See* Ala. Admin. Code r. 586-X-3-.11(a)-(g).

11. Other criteria adopted by the Commission related to specific qualifications of potential licensees. Among these criteria were whether an applicant would fully utilize its license authorization, how quickly an applicant could commence operations and reach full capacity, and whether an applicant would be able to minimize cost to patients. Ala. Admin. Code r. 586-X-3-.11(h)-(j).

12. Other criteria related to financial ability and responsibility, business history, moral suitability, and minority participation. For example, the Act requires that applicants provide a performance bond in the amount of \$2 million dollars or a letter of commitment (or other similar acknowledgment) of the applicant's ability to secure a two million dollar performance bond from a highly rated insurance company. Ala. Code § 20-2A-67(c).

13. And still other statutory criteria required cultivators (including integrated facilities) to be able to "demonstrate the ability to commence cultivation of cannabis within 60 days of application approval notification." *Id.* § 20-2A-62(c)(1). And the rules adopted by the Commission pursuant to this statute provide, "The number of days, if awarded a license, within which the Applicant reasonably projects it will commence operations as to each facility identified in the application, and the number of days within which the Applicant reasonably projects it will reach full capacity as to the operations contemplated with regard to each

facility identified in the Application.” Ala. Admin. Code r. 538-x-3-.05.

Alabama Always’s Preparations

14. Based on the statutory requirement of beginning production within 60 days of a license award and in preparation for applying for an Integrated Facility license, Alabama Always began constructing a facility in an economically-depressed area just west of Montgomery. Alabama Always has already spent in excess of \$4.5 million on its cultivation and production facility work continues to finish the facility by mid-July. Its facility is largely complete and is fully capable of beginning the cultivation of cannabis in late July or early August. Its cultivation capacity will be sufficient to produce enough cannabis and finished cannabis products to open and stock the five stores the company has leased by January of 2024, if not sooner. The five locations of the stores identified in Alabama Always’s application cover Alabama north to south. They are: Montgomery, Tuscaloosa, Birmingham, Gadsden and Mobile. This is a current picture of the newly built Alabama Always production facility.



15. Alabama Always raised \$15 million dollars of capital from 40 individuals, 28 of whom are Alabama residents of 15 years or more. That money was placed in a cannabis

qualified account for Alabama Always, LLC at Valley National Bank, which is certified to offer banking services to cannabis companies. Alabama Always has no debt and owns title to its cultivation facility and the equipment necessary to operate the grow and the production of cannabis. Because of its strong financial position and its cash and real estate assets, all owned directly by Alabama Always, Alabama Always has already procured the \$2 million surety bond made payable to the State of Alabama. That bond is included in its application.

16. Alabama Always will be ready to commence planting within fifteen days of receiving a license and will be ready to provide medication through its five dispensaries statewide by December 2023—six months from now.

17. Upon information and belief, Alabama Always is far ahead of all other applicants in satisfying the criteria adopted by the Commission, including the criterion of being able to get to market with product quickly.

The Application Process

18. After adopting its regulations, the Commission began deviating from them.

19. Upon information and belief, the Commission engaged a third-party provider to create an application process.

20. The resulting requirements for a license application were very detailed, so detailed, in fact, that the Commission issued application guides for applicants that set out all of the requirements. The application guides, scoring guide, and the ultimate scoring by the consultants are all inconsistent with each other and the requirements set out by the Act and related regulations.

21. Rather than engaging in a process that allowed the Commission and its members to form their independent judgment about the qualifications of individual applicants as contemplated by its regulations, the Commission was advised to embark on a path of requiring applicants to provide extremely detailed applications that would be graded

according to their “meticulous attention to detail.”

22. Applicants, including Alabama Always, submitted their applications, which were graded or scored by a group of anonymous graders under the direction of the University of South Alabama.

Alabama Always’s Application

23. More than 70% of Alabama Always shareholders are long-time (more than 15 years) residents of the State of Alabama. The entire board of directors consists of Alabama residents and shareholders.

24. The operating team proposed by Alabama Always has significant commercial horticultural and/or agronomic production experience.

25. Alabama Always submitted its application in a timely fashion, despite encountering (now well-known) issues with the application process, including the existence of a 10MB limit on the file size of required exhibits.

26. Although no statute, regulation, or guidance by the Commission specified a maximum 10MB file size for each exhibit, the Commission’s application portal introduced such a limit without notice to applicants. And even when the Commission was made aware by applicants of significant problems with uploading data in mid-December of 2022, the Commission did nothing to fix the problem although it did provide “workarounds” for a select few applicants.

27. As a result of the 10MB size limit, Alabama Always had to immediately try to resize many of its exhibits so that they could be uploaded by the December 30, 2022 deadline.

28. Alabama Always was fortunate to have an IT expert on its staff, who was forced to scramble to reduce the file size by compressing the data multiple times. That repeated compression of the files degrades the quality of the images and of many of Alabama Always’s exhibits, negatively impacting the application.

29. As just one example, Alabama Always was required to submit engineering plans. As stated on the “frequently asked questions” section of the Commission’s website, those plans needed to be “such that they can be zoomed/magnified without any feature of the drawing losing scale, detail, resolution, or clarity.”

30. But the quality of Alabama Always’s engineering plans were rendered practically illegible due to the repeated compression efforts in order to get the file size under the 10MB limit. This diminished quality likely harmed Alabama Always’s application and may have cost them points when the application was scored by the USA graders.

31. In other words, the requirement to compress all files to a size under 10MB impacted the detail, resolution, and clarity of this exhibit and others, harming Alabama Always’s submission.

32. Upon information and belief, Alabama Always’s application ultimately received a lower score due to these illegibility issues.

33. The Commission was well aware of this issue, and others, before the deadline.

34. Despite knowing about these issues, the Commission either chose not to act or informed certain applicants—but not all applicants—of a workaround, namely that they should ignore the 10MB size limit, insert blank pages for those exhibits, and then submit the complete versions of the exhibits to the Commission.

35. Alabama Always was never told that it could submit a complete, uncompressed versions of its exhibits to the Commission. As far as they knew, the file size limitation was a requirement.

36. The Commission’s lawyer admitted to this selective treatment of applicants during a hearing before this Court in another matter.

The License Awards and the Commission’s Stay

37. Upon information and belief, the grading process of all applications was

completed in early June, but the Commission was not given access to the scores until the morning of June 12, when it was scheduled to vote to award licenses.

38. Notably, upon information and belief, the Commissioners and their staff never visited any site to assess the applicant's ability to cultivate, process, and bring product to market in a timeline consistent with the intent behind the Act. Certainly, no Commission member or Commission staff visited Alabama Always's \$4.5 million facility.

39. At the June 12 meeting, the Commission went almost immediately into executive session. Hours later, the Commission emerged from executive session to award licenses to a slate of the highest-scoring applicants in each category of license—integrated, cultivator, processor, retailer, transporter, and laboratory—seemingly in violation of the Alabama Open Meetings Act. There was no public deliberation, merely an award of licenses to vote on a slate of the top-scoring applicants in each category. It appears to observers that the actual decision to award licenses was made in executive session.

40. It is significant that the Commission did not entertain any deliberation on the applicants, even among those whose scores were virtually the same.¹ This is just another example of the Commission's failure to follow its own procedures and regulations, and to potentially violate the Open Meetings Act, presumably on the advice of staff and others.

41. The Commission has the duty to review applications and award licenses. While the Commission may have been authorized to utilize additional resources, including outside consultants, it is the Commission's responsibility to use its judgment to award licenses to the applicants who are best qualified to achieve the standards and goals set forth in the Act and the Commission's regulations. Specifically, "the Commission remains the primary

¹ Flowerwood Medical Cannabis was the fifth-ranked applicant, with 5,425 points or 79% of possible points. The next three applicants (Hornet Medicinals, Jemmstone Alabama, Insa Alabama, and AlaBloom) all fell within one percentile of Flowerwood's scores.

decisionmaker with regard to licensing.” Ala. Admin. Code r. 538-x-3-.12; *see also* Ala. Admin. Code r. 538-x-3-.10 (“Any independent consultants selected by the Commission will provide recommendations for the Commission to consider, but the Commission shall not be bound by the recommendation and the decision as to final approval or rejection of licensees shall remain the province of the Commission at all times.”).

42. The Commission essentially rubber-stamped the consultant’s scores, effectively as final outcomes. A “vote” was taken at the June 12, 2023 meeting of the Commission, but this amounted to nothing more than adopting the scores assigned by the scoring consultant, scores that the Commission’s members were not allowed to review prior to the June 12 meeting.

43. The error in relying exclusively on the third-party scoring, rather than the Commission’s own judgment, became evident by June 16, when the Commission held an emergency meeting. Noting that it had uncovered serious “inconsistencies” in the scoring process, and stating that it had averted a “catastrophe,” the Commission voted to stay the process for awarding licenses and engage yet another third party to audit or review the scores.

44. The Commission has admitted to “inconsistencies in the score data” and called an emergency meeting:

The stay was issued because of AMCC’s discovery of potential inconsistencies in the tabulation of scoring data. During this pause in proceedings, the Commission will seek an independent review of all scoring data.

“The Commission will work expeditiously to investigate and identify inconsistencies in the score data” explained AMCC Director, John McMillan. “Out of an abundance of caution, we are suspending all current procedural timelines until those matters are resolved.”

45. This proposed “independent review” of the data will not solve the basic problem with the process, because the Commission still will not be permitted to exercise its own judgment in selecting licensees.

46. The stay imposed by the Commission is likely invalid because the regulations permit a stay only “due to the pendency of hearings or appeals on some or all licenses,” and because the Commission failed to give the required statutory notice of 30 days for the meeting. The Commission noticed their “emergency meeting” at 2:00pm on June 15, less than 24 hours before their 1 PM June 16th “Emergency Meeting”. A stay, therefore, is necessary to prevent irreparable harm to Always Alabama, other applicants, and the public at large if it is later found that the “Emergency Meeting” was not noticed properly, rendering the actions taken as null and void for lack of notice.

47. The Commission’s stay will remain in effect “until lifted by the Commission.” The uncertainty of any future schedule will cause irreparable harm to Alabama Always by potentially depriving Alabama Always of the ability to react to the next action of the Committee in time to preserve its rights. For example, according to the Commission’s application guide and regulations, “If a stay against the issuance of some or all licenses is entered by the Commission or a court of competent jurisdiction, then licenses shall issue within three (3) business days after the lifting of any such stay.” (See application guide and Admin. Code r. 538-x-3-.18.)

48. Alabama Always and the people of the State of Alabama deserve clarity and transparency in the application process.

49. In addition, serious questions exist as to whether the Commission has the authority to issue such a stay.

50. The regulations provide for the licenses to be issued in a timely manner, specifically as follows:

Unless the Commission or other court of competent jurisdiction enters a stay against the issuance of some or all licenses, licenses shall issue to all Applicants who have been awarded licenses upon processing of the appropriate license fees, not later than 14 days after the deadline for payment of the appropriate fee; for the initial offering, issuance of licenses shall occur on the later of noon,

CDT, July 10, 2023, or 28 days from the date licenses are awarded, or within three (3) business days after the lifting of any stay on the issuance of licenses.

....

Despite the Commission's announcement of the award of licenses, due to the pendency of hearings or appeals on some or all licenses in a particular offering, some or all licenses may not issue, in the discretion of the Commission, but may be stayed until the time for appeal has lapsed or all appeals from the Commission's decision have resolved, whichever is later

Ala. Admin. Code r. 538-x-3-.18 (emphasis added).

51. When the Commission issued the stay, no hearings or appeals were pending.

52. And no court of competent jurisdiction has entered a stay against the issuance of some or all license.

53. Whether the Commission's stay is effective creates significant uncertainty for applicants like Alabama Always. For example, if the stay is unlawful, and Alabama Always does not seek either an investigatory review of its application or another remedy, the time for doing so may expire. On the other hand, if Alabama Always files a request for an investigation of its application, that request may go unanswered for an indeterminate amount of time, until the Commission suddenly lifts its stay and triggers the three day timeline for additional action.

The Commission's 10MB Size Limit Rule on Exhibits

54. There is no such 10MB limit in the Act or in any regulation promulgated by the Commission.

55. The 10MB size limit and any workarounds created by the Commissions are "rules" of the Commission subject to the Alabama Administrative Procedure Act (AAPA).

56. The AAPA establishes the "basic minimum procedural requirements" for the adoption of any agency rules. Ala. Code § 41-22-5(c).

57. Under the AAPA, before adopting a rule, then, the Commission has to "give at

least 35 days' notice of its intended action." *Id.* § 41-22-5(a).

58. And that notice must include certain information, including the substance of the proposed rule and how people can comment on the proposed rule. *Id.* § 41-22-5(a)(1).

59. The Commission must also allow for and hear comments on the proposed rule. *Id.* § 41-22-5(a)(2).

60. If an agency (like the Commission) fails to comply with these "basic minimum procedural requirements" before adopting a rule, then the rule is invalid. *Id.* § 41-22-5(d) ("No rule adopted after October 1, 1982, is valid unless adopted in substantial compliance with this section.").

61. The Commission never provided notice of the 10MB size limit rule or any workarounds.

62. The lack of public notice means that the Commission never received public inspection or comments on the 10MB size limit or any workaround.

63. If the Commission had received comments on the 10MB rule, it would have heard from Alabama Always (and likely others) that the rule does not serve the public's best interest, it unnecessarily limits the Commission's ability to receive all of the data that it needs to make a fully informed decision on whether to issue a license to an applicant.

64. Without being able to receive all the data or applications, the Commission is left with making a decision—a decision for Alabama residents who suffer from medical conditions whose symptoms could be alleviated by medical cannabis products—based on incomplete information.

65. Such a decision harms the public.

66. Because the Commission failed to comply with the AAPA, its 10MB limit rule, the workarounds created by the Commission in response to inquiries, and the inconsistent actions by the Commission and its staff in revealing and implanting the "workarounds" are

invalid and ineffective. *See id.* § 41-22-4(b); *id.* § 41-22-5(d).

67. The 10MB rule and the inconsistent workarounds led to a high degree of variability of the file sizes, and ultimately the quality, of Alabama Always’s application.

Potential Violations of the Alabama Open Meetings Act

68. The Alabama Open Meetings Act (OMA) states that the “it is the policy of this state that the deliberative process of governmental bodies shall be open to the public during meetings.” Ala. Code § 36-25A-1(a).

69. The meetings of the Commission are “Meetings” within the definition set forth in the OMA.

70. “Deliberation” is defined in the OMA as the following:

An exchange of information or ideas among a quorum of members of a subcommittee, committee, or full governmental body intended to arrive at or influence a decision as to how any members of the subcommittee, committee, or full governmental body should vote on a specific matter that, at the time of the exchange, the participating members expect to come before the subcommittee, committee, or full body immediately following the discussion or at a later time.

Id. § 36-25A-2(1).

71. The OMA allows covered state agencies to hold “Executive Sessions” only under limited circumstances and only for certain expressly allowed purposes. *Id.* § 36-25A-7(a).

72. The Commission apparently has held Executive Sessions for most of its meetings, including the critical meetings of April 12, 2023 and June 16, 2023. Based on the unanimity or near-unanimity of Commission votes immediately following executive sessions, it is reasonable to conclude that substantive discussions—or deliberations—have occurred during executive sessions in violation of the OMA. Notably, in addition, Commission staff has refused to permit remote viewers of Commission meetings to record meetings, in violation of the OMA.

Count One

73. Alabama Always adopts and incorporates the previous paragraphs as if specifically alleged in this paragraph.

74. The Commission's denial of Alabama Always's application for an Integrated Facility medical cannabis license violates the AAPA and the Commission's own regulations because the Commission, apparently relying on advice from Commission staff and others, improperly delegated its nondelegable duty to exercise its own judgment to make licensure decisions.

75. Based on the statements made during the June 16 meeting, the Commission intends to continue this improper delegation of its authority by engaging another third-party entity to make licensure decisions.

76. In the absence of injunctive relief, Alabama Always will suffer irreparable harm in the form of the improper denial of its Integrated Facility license application.

WHEREFORE, Alabama Always prays that the Court enter a temporary restraining order and a preliminary and permanent injunction enjoining the Commission from any and all proceedings related to the evaluation and issuance of licenses.

Count Two

77. Alabama Always adopts and incorporates the previous paragraphs as if specifically alleged in this paragraph.

78. The AAPA permits "[t]he validity or applicability of a rule" to "be determined in an action for a declaratory judgment." Ala. Code § 41-22-10.

79. Alabama Always submits that the 10MB size limit rule and any workaround created or shared by the Commission and its staff, are invalid because the Commission failed to comply with the AAPA's basic minimum procedural requirements.

80. The Commission failed to provide notice of the rule.

81. The Commission failed to allow and hear comments on the rule.

82. The Commission adopted the rule without substantial compliance with the AAPA's rulemaking procedures.

83. Therefore, the rule is invalid.

84. In addition, the rule interferes with and impairs Alabama Always's legal rights.

85. Exhaustion of administrative remedies is not a prerequisite to challenging the validity of the Commission's 10MB size limit rule. *See State Pers. Bd. v. Cook*, 600 So. 2d 1027, 1027 (Ala. Civ. App. 1992) ("[T]he supreme court held that exhausting administrative remedies was not a prerequisite to challenging the validity of a rule under § 41-22-10, Code (1975).").

86. In addition, Alabama Always need not exhaust any administrative remedies because this lawsuit raises questions of statutory interpretation, concerns pure questions of law (and not questions involving agency discretion or factfinding), and involves a threat of irreparable injury, as explained in this complaint.

WHEREFORE, Alabama Always asks this Court for a declaration under the AAPA and the Alabama Declaratory Judgment Act that the Commission's 10MB size limit rule for application exhibits, its selective enforcement of that rule, and its workarounds to that rule are invalid. Alabama Always further prays that the Court award Alabama Always costs, interest, and any other equitable and/or legal relief to which it is entitled.

Count Three

87. Alabama Always adopts and incorporates the previous paragraphs as if specifically alleged in this paragraph.

88. The AAPA permits this Court to stay enforcement of an agency rule "by injunctive relief." Ala. Code § 41-22-10.

89. Without the requested injunctive relief, Alabama Always will suffer immediate and irreparable injury.

90. Furthermore, the harm that Alabama Always faces is not susceptible of being compensated with money damages.

91. Alabama Always has no adequate remedy at law.

92. There is no remedy for the Commission's failure to judge all applications fairly and in compliance with its own rules and regulations.

93. Without the requested injunctive relief, Alabama Always will suffer irreparable harm in the form of interference with its business.

94. Alabama Always is likely to succeed on the merits of its claim, for the reasons explained in this verified complaint, including because the Commission failed to substantially comply with the AAPA's rulemaking procedures.

95. Any hardship imposed on the Commission by the requested injunction does not outweigh the benefit to Alabama Always in receiving the requested injunction.

96. In addition, not issuing the injunction would severely harm the public.

97. The Act exists to help ensure that the best entities cultivate, transport, and dispense the best medical cannabis to Alabama residents suffering from medical conditions whose symptoms could be alleviated by medical cannabis.

98. The public is deprived of potentially obtaining the best Integrated Facility (and other) licensees when the Commission, by act or omission, violates the AAPA, as it has in this case, and causes ongoing and irreparable harm to the licensing process.

99. Immediate and irreparable injury, loss, or damage will result to Alabama Always before the Commission can be heard in opposition.

WHEREFORE, Alabama Always prays that the Court enter a temporary restraining order and a preliminary and permanent injunction ordering the Commission to establish

clear rules, with public notice and comment, on the scoring of the applications. Alabama Always further prays that the Court award Alabama Always costs, interest, and any other equitable and/or legal relief to which it is entitled.

PRAYER FOR RELIEF

WHEREFORE, in addition to the relief request above, Alabama Always prays that the Court enter an order (1) requiring the Commission to stay all proceedings related to the offering of medical cannabis business licenses, including a stay of all requirements to pay license fees; (2) entering a stay or tolling of the timing for applicants denied a license to submit a Request for Investigative Hearing; (3) issuing a stay of the award or issuance of any licenses until the Court further rules; (4) requiring any further review and deliberation of the application process to be in accordance with the OMA, including but not limited to, all requirements for proper notice and public comment; (5) allowing Alabama Always to submit a complete, uncompressed application (with exhibits larger than 10MB) to the Commission; and (6) the Court award Alabama Always costs, interest, and any other equitable and/or legal relief to which it is entitled.

Respectfully submitted,

/s/ William G. Somerville
 WILLIAM G. SOMERVILLE
 MICHAEL A. CATALANO
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PLEASE SERVE DEFENDANT VIA CERTIFIED MAIL AT THE FOLLOWING ADDRESS:

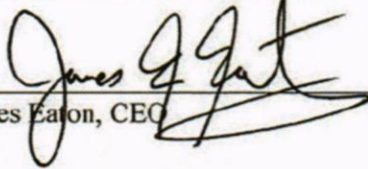
The Alabama Medical Cannabis Commission
c/o John McMillan, Director
P. O. Box 309585
Montgomery, Alabama 36130

VERIFICATION

In accordance with Alabama Rule of Civil Procedure 65(b), James Eaton, the representative for Alabama Always LLC, being first duly sworn in accordance with the law, being informed of and familiar with the facts set forth and the statements made in the introduction and paragraphs 14–16, 23–25, 28–31, 35, 38, 46–47, 53, 76, 86, 89–92, and 99 of the foregoing verified complaint, which set forth specific facts

that immediate and irreparable injury, loss, or damage will result, make oath that the foregoing averments are true to the best of my knowledge and where stated my information and belief.

Given under my hand and official seal this 22nd day of June 2023.

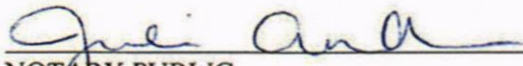

James Eaton, CEO

STATE OF FLORIDA

COUNTY OF LEON

I, the undersigned authority, a Notary Public in and for said State and County, do hereby certify that James Eaton, who is known to me, acknowledged before me, on this day, that, being informed of the contents of the instrument, he has signed, sealed, and delivered the same voluntarily, and with full authority for said entity.

Given under my hand and official seal this the 22nd day of June 2023.


NOTARY PUBLIC

My Commission Expires: December 3, 2026



FILED '23 JUN 22 PM 4:14
MONTGOMERY CIRCUIT CT

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

ALABAMA ALWAYS, LLC,)
)
Plaintiff,)
)
v.)
)
STATE OF ALABAMA MEDICAL)
CANNABIS COMMISSION,)
)
Defendant.)

Case No. CV 2023-231

PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER AND MOTION FOR PRELIMINARY INJUNCTION

In accordance with Alabama Rule of Civil Procedure 65, Plaintiff Alabama Always LLC (Alabama Always) moves the Court for a temporary restraining order and preliminary injunction against Defendant State of Alabama Medical Cannabis Commission (the Commission) in the form attached as **Exhibit A** to this motion.

Specifically, Alabama Always asks this Court to enjoin the Commission, its officers, agents, servants, employees, and attorneys and other persons acting in active concert or participation with them from (1) taking actions to prevent Alabama Always and its employees from submitting a full and complete application for an integrated medical cannabis license, with no limitation on file size and no compression requirement and (2) from proceeding further with the application and licensure process. In support of this motion, Alabama Always states the following:

1. As background, Alabama Always is an applicant for a medical cannabis integrated license. On December 30, 2022, the Alabama Always team learned that the portal by which Alabama Always was to submit its application was enforcing a 10-megabyte limitation on all PDF files. The 10-megabyte limitation is not in the Act or the regulations. Alabama Always went to great lengths to compress its files to 10 megabytes, resulting in many cases in a degradation of those files.

2. Following the submission of its application, like most applicants, Alabama Always received deficiency notices from the Commission regarding its submissions. None of the deficiency notices received by Alabama Always related to the quality of the exhibits in its application. Rather, they generally related to matters of formatting.

3. During a previous hearing held from April 3 to April 7, it became evident that the Commission had allowed some applicants to circumvent the 10MB rule by filing a sheet of paper as a placeholder in the electronic portal and later submitting a USB drive with complete, uncompressed exhibits, often greatly exceeding 10MB. During that hearing, counsel for the Commission testified under oath that he did not know whether the 10MB limitation or the “workaround” (namely, the option of submitting the uncompressed USB drive to the Commission later) became known to all applicants or whether it would affect scoring of the applications.

4. Although the Commission’s regulations permit it to engage consultants to assist in the licensure process, they do not permit it to rely exclusively on consultants or third parties in making its licensure decisions. The regulations make clear, for example, that while the Commission may engage consultants, “the Commission shall not be bound by the recommendation and the decision as to final approval or rejection of licensees shall remain the province of the Commission at all times.” Ala. Admin. Code r. 538-X-3-.10; *see also* Ala. Admin. Code r. 538-X-3-.12 (“[T]he Commission remains the primary decisionmaker with respect to licensing. . .”).

5. On June 12, the Commission held a meeting at which it immediately entered “executive session.” After several hours in executive session, it emerged and immediately voted to accept, without debate or deliberation, the full slate of applicants in each category (cultivator, processor, retailer, integrated, lab, and secure transporter) comprising the highest-scoring applicants in each category. Thus, contrary to the admonition contained in

the regulations, the Commission allowed itself to be bound by the scores assigned by the third-party consultant. Although the third-party consultant is apparently the University of South Alabama, no one knows the identity of the scorers or the nature and extent of their qualifications. It is widely known, however, that the University advertised statewide to hire persons to perform the scoring process, apparently because it did not have sufficient personnel to perform the task.

6. In failing to perform its deliberative duty, and instead allowing itself to be bound by the consultant's applicant slate, the Commission acted arbitrarily and capriciously. In the alternative, by blindly accepting the consultant's slate, the Commission allowed the scoring system to become a rule within the definition of Alabama Code § 41-22-3(9), without following the Alabama Administrative Procedures Act's requirements for public notice and comment. Also, in the alternative, if the Commission engaged in debate concerning the vote in executive session, it violated Alabama's Open Meetings Act.

7. Alabama Always therefore seeks a temporary restraining order and preliminary injunction preventing the Commission (1) from taking actions to prevent Alabama Always and its employees from submitting a full and complete application for an integrated medical cannabis license, with no limitation on file size and no compression requirement; (2) from utilizing the scoring system contained in the Commission's Application Guide as the sole or determinative criterion in awarding licenses; and (3) from proceeding further with the application and licensure process. Without issuance of a temporary restraining order and preliminary injunction, Alabama Always will suffer immediate and irreparable harm for which there is no adequate remedy at law—denying Alabama Always and its employees the ability to be considered for the granting of a medical cannabis integrated license based on their extensive experience and qualifications and full merits, also denying Alabama Always the opportunity, likely forever, to apprise the Commission, its

members, agents and employees of the full merits of its application and its full qualifications as a retailer of medical marijuana in the State of Alabama. This will result in irreparable harm to Alabama Always and its business reputation and goodwill.

8. In deciding whether to issue a temporary restraining order and a preliminary injunction, Alabama Always must satisfy the Court (1) that without the injunction Alabama Always will suffer immediate and irreparable injury; (2) that Alabama Always has no adequate remedy at law; (3) that Alabama Always is likely to succeed on the merits of the case; and (4) that the hardship imposed upon the Commission by the injunction would not unreasonably outweigh the benefit to Alabama Always. *See State v. Two White Hook Wreckers*, 337 So. 3d 735, 737 (Ala. 2020); *see also White v. John*, 164 So. 3d 1106, 1116 (Ala. 2014). Alabama Always meets each here.

9. *First*, without the requested injunction, Alabama Always will suffer immediate and irreparable harm. By denying Alabama Always the ability to submit its full and complete application, the Commission will have deprived Alabama Always of the ability to have its full and complete application considered on its full merits, thereby placing Alabama Always's application in severe and unjustified jeopardy, and preventing it from developing its business and customers. The resultant damage to Alabama Always's reputation and goodwill would therefore be irreparable. *See Ferrero v. Associated Materials Inc.*, 923 F.2d 1441, 1449 (11th Cir. 1991) ("It is well established that the loss of customers and goodwill is an irreparable injury.").

10. *Second*, the harm that Alabama Always faces is irreparable because it is not susceptible of being compensated with money damages. As noted, harm to Alabama Always would result in damage to Alabama Always's ability to cultivate and supply medical cannabis, resulting in injury that cannot be calculated or reduced to money damages, thereby demonstrating that the Alabama Always has no adequate remedy at law. *See Triple J Cattle*,

Inc. v. Chambers, 551 So. 2d 280 282 (Ala. 1989) (noting that “irreparable injury” means that it cannot be remedied through money damages in a court of law).

11. *Third*, Alabama Always has a substantial likelihood of success on the merits of its claims. It is undisputed that the 10-megabyte rule has not been adopted in accordance with the Alabama Administrative Procedure Act, was not published for notice and comment, and was not even made known to applicants before they began the process of uploading their applications. It is also undisputed that the workaround was not adopted in accordance with the Alabama Administrative Procedure Act. Finally, it is undisputed that, in blindly accepting the consultant’s scores as the sole criterion, the Commission either acted arbitrarily and capriciously, improperly created a rule, or violated the Open Meetings Act. *See* Ala. Code § 41-22-5 (requiring an administrative agency, like the Commission, to provide notice and allow for comments on any proposed rules and stating that if the agency fails to do this, then its rule is invalid).

12. *Fourth*, the threatened injury to Alabama Always far outweighs the threatened harm an injunction may do to the Commission. The Commission has already purported to stay the proceedings; Alabama Always simply asks for an injunction accomplishing the same thing. The stay issued by the Commission is questionable for two reasons: First, a fair reading of the regulations is that the Commission may issue a stay only “due to the pendency of hearings or appeals on some or all licenses.” Ala. Admin. Code r. 538-X-3-.18. No hearings or appeals have been filed with the Commission or any court. Second, the Alabama Cannabis enabling statute requires the Commission to give at least 30 days’ notice for any meeting. *See* Ala. Code § 20-2A-20(h) (“All members shall be duly notified by the commission director of the time and place of any regular or special meeting at least 30 days in advance of any meeting.”)). No such notice was given for the meeting at which the Commission issued the stay. Alabama Always believes that a stay is necessary but does not believe that the

Commission had authority to grant a stay under the circumstances. Injury to Alabama Always's business reputation and goodwill, by contrast, is irreparable.

13. *Fifth*, Alabama recognizes that, in determining whether to grant injunctive relief, courts should consider whether the injunction will be in the public interest. *See, e.g., Shelby Cnty. Treatment Ctr. v. Edmondson*, 945 So. 2d 1048, 1056 (Ala. Civ. App. 2005) (permanent injunction must not disserve the public interest). In this case, an injunction will allow the Commission to make a more informed decision on the issuance of medical cannabis dispensary licenses.

14. The undersigned certifies that he or his co-counsel has notified the Commission via telephone on June 22 and via email correspondence on June 22 that Alabama Always is filing this motion.

FOR THESE REASONS, Alabama Always therefore moves for a temporary restraining order and preliminary injunction in the form attached as **Exhibit A** to this motion.

Respectfully submitted,

/s/ William G. Somerville
 WILLIAM G. SOMERVILLE
 MICHAEL A. CATALANO
 JADE E. SIPES

OF COUNSEL:

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 CALDWELL & BERKOWITZ, PC
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EXHIBIT A

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

ALABAMA ALWAYS, LLC,)	
)	
Plaintiff,)	
)	
v.)	Case No. _____
)	
STATE OF ALABAMA MEDICAL)	
CANNABIS COMMISSION,)	
)	
Defendant.)	

TEMPORARY RESTRAINING ORDER

Based upon Plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction, and upon the evidence before the Court, this Court finds that, absent the issuance of a temporary injunction, Plaintiff is in imminent danger of suffering irreparable harm in the form of interference with its business, damage to its reputation, and loss of business opportunities for which there is no adequate remedy at law.

This Court specifically finds that the requirements for granting a temporary restraining order have been established by Plaintiff. Plaintiff has demonstrated that it has a substantial likelihood of success on the merits on several of its claims. First, Plaintiff has shown that it was not informed of the Commission's "workaround" before it filed its application for an integrated medical cannabis license on December 30, that it was forced to compress its electronic filings to comply with the Commission's arbitrary 10 megabyte (MB) file size limitation, and that the process of compressing its files degraded the files' quality to an extent that it had a material impact on the scores that its application was assigned. Other applicants were not required to subject their filings to the 10 MB limitation, but were permitted to file larger exhibits outside of the electronic portal by means of a USB drive.

Plaintiff has also demonstrated that the Commission's delegation of its decision-making process to a group of anonymous scorers was improper. There is substantial evidence

that the Commission accepted the scoring of the anonymous graders without debate, voting to accept the slate of highest scoring applicants. The Commission and its members have a duty to exercise their independent judgment in making licensure decisions, as evinced by [cite reg and/or statute]. In addition, the transformation of the scoring system from a merely advisory device to the exclusive mechanism for awarding licenses causes the scoring mechanism to become a “rule” within the meaning of the Alabama Administrative Procedures Act (AAPA), *see* Ala. Code § 41-22-3(9). This is a rule that has not been properly adopted pursuant to the AAPA.

Without issuance of a temporary restraining order, Plaintiff will suffer immediate and irreparable harm for which there is no adequate remedy at law. The first problem with the imposition of the 10 MB file-size limitation on applications or application exhibits will continue to improperly deprive Plaintiff of the ability to have its complete application considered by the Commission. In addition, the Commission’s imposition of the rigid scoring system in place of a deliberative decision-making process deprives Plaintiff of its right to have its application considered by the Commission, as well as constituting a rule that has not been properly adopted pursuant to the AAPA. These improper processes would therefore result in damage to Plaintiff’s business reputation and goodwill, and would therefore result in injury that cannot be calculated or reduced to money damages, thereby demonstrating that Plaintiff has no adequate remedy at law.

Moreover, the Court finds that Defendant will suffer no hardship if the temporary restraining order is granted. To the contrary, it appears that the Commission has no legal justification for imposing a 10 MB file-size limitation, and particularly in light of its selective enforcement of this limitation. The Court further specifically finds that any harm that could be caused to Defendant by ordering it to remove (or not enforce) a 10 MB requirement is negligible, and is vastly outweighed by the threatened harm to

Plaintiff by not allowing the submission of the complete application for a license.

The Court further finds that the issuance of a TRO will not harm the Commission because the Commission has already purported to issue its own stay of the proceedings.

Accordingly, it is hereby ORDERED, ADJUDGED, and DECREED by the Court that the Commission, its officers, agents, servants, employees, and attorneys and other persons acting in active concert or participation with them who receive notice of this order by service or otherwise permit Alabama Always LLC, to file the complete application that it attempted to file on December 30, 2022 in a completely uncompressed format and that the Commission will assess that complete application.

It is further ORDERED, ADJUDGED, and DECREED that the Commission's proceedings for issuing medical cannabis licenses, and all deadlines relating thereto, shall be and are hereby STAYED.

It is further ORDERED, ADJUDGED, and DECREED that this order is binding on the Commission, its officers, agents, servants, employees, and attorneys and other persons acting in active concert or participation with them who receive notice of this order by service or otherwise.

This order is conditioned on Plaintiff posting security in the amount of \$25,000 with the Clerk of Court in a form satisfactory to the Clerk.

Finally, a hearing on Plaintiff's Motion for Preliminary Injunction is hereby set for _____, 2023, at _____.M. This order was entered at _____.M. on June __, 2023, and will expire on its own terms at the conclusion of the hearing on Plaintiff's Motion for Preliminary Injunction or _____.M. on _____, 2023, whichever is earlier.

DONE AND ENTERED this ____ day of _____, 2023.

CIRCUIT COURT JUDGE

FILED '23 JUN 22 PM 4:14
MONTGOMERY CIRCUIT CT

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

ALABAMA ALWAYS, LLC,)
)
Plaintiff,)
)
v.)
)
STATE OF ALABAMA MEDICAL)
CANNABIS COMMISSION,)
)
Defendant.)

Case No. CV 2023-231

MOTION FOR EXPEDITED DISCOVERY

Pursuant to Alabama Rules of Civil Procedure 30, 34, 36, and 45, Plaintiff Alabama Always, LLC (Alabama Always) moves the Court for an order for expedited discovery. Specifically, Alabama Always asks the Court to shorten the time frame for Defendant Alabama Medical Cannabis Commission (the Commission) to respond to the written discovery attached to this motion as **Exhibit A** within seven days and permit Alabama Always to take depositions of the Commission within seven days after serving a notice. In further support, Alabama Always states the following:

1. Contemporaneously with the filing of this motion, Alabama Always has filed a verified complaint and motion for temporary restraining order and preliminary injunction seeking relief arising out of, among other things, the Commission's failure to comply with the Alabama Administrative Procedures Act and its own rules and regulations.

2. Because of the substantial likelihood that the Commission's wrongful conduct will continue to cause Alabama Always severe and irreparable harm, Alabama Always has moved for a temporary restraining order and preliminary injunction.

3. Alabama Always therefore asks the Court to afford it the opportunity to fully learn of the extent of the Commission's wrongful conduct before any preliminary injunction hearing. Because the hearing on Alabama Always's request for a preliminary injunction may

be held before Alabama Always is permitted to conduct discovery under the normal timeframes prescribed under Rules 30, 34, 36 and 45, and because Alabama Always will be required to present substantial factual support of its entitlement to injunctive relief at that hearing, Alabama Always needs to obtain accelerated discovery of facts and information relevant to this matter prior to the time prescribed by Rules 30, 34, 36 and 45. Courts routinely order expedited discovery when a party is seeking a preliminary injunction. *See, e.g., KBG Holding Corp. v. Union Bank*, 56 F. App'x 111, 114 (4th Cir. 2003) (noting that “[t]he parties engaged in expedited discovery in preparation for the . . . hearing on the . . . motions for preliminary injunction”); *Radio Sys. Corp. v. Sunbeam Prods, Inc.*, 2013 WL 416295, at *2 (E.D. Tenn. Jan. 30, 2013) (noting that “expedited discovery is generally appropriate in cases requesting preliminary injunction relief”); *Meritain Health Inc. v. Express Scripts, Inc.*, 2012 WL 1320147, at *2 (E.D. Mo. April 17, 2012) (granting the plaintiff’s motion for expedited discovery and noting that “[e]xpedited discovery is generally appropriate in cases, such as this, where a party is attempting to prepare for a preliminary injunction hearing”); *Edudata Corp. v. Scientific Computers, Inc.*, 599 F. Supp. 1084, 1088 (D. Minn. 1984) (ordering expedited discovery where it would “better enable the court to judge the parties’ interests and respective chances for success on the merits” at a preliminary injunction hearing).

FOR THESE REASONS, Alabama Always respectfully requests that the Court grant it leave to obtain accelerated discovery and order that:

- a. Subpoenas may be immediately served upon third parties without regard to the fifteen-day notice of intent requirement or any other timing requirement of Rule 45;
- b. Persons or entities (parties or non-parties) served with a notice of deposition, request for production of documents, interrogatories, or subpoenas must:

1. Respond to all document requests within 7 days of the requests being served on them or their attorney;
2. Appear for deposition within at least 7 days of the service of a deposition notice on them or their attorneys; and
3. Refrain from disposing of any of the documents or materials related to the claims and conduct alleged in the verified complaint or otherwise discoverable under Alabama Rules of Civil Procedures.

Respectfully Submitted,

/s/ William G. Somerville
WILLIAM G. SOMERVILLE
MICHAEL A. CATALANO
JADE E. SIPES
Attorneys for Plaintiff

OF COUNSEL:

BAKER, DONELSON, BEARMAN,
CALDWELL & BERKOWITZ, PC
1901 Sixth Avenue North, Suite 2600
Birmingham, Alabama 35203
(205) 328-0480
wsomerville@bakerdonelson.com
mcatalano@bakerdonelson.com
jsipes@bakerdonelson.com

PLAINTIFF WILL SERVE UPON DEFENDANT CONTEMPORANEOUSLY WITH THE VERIFIED COMPLAINT AT THE FOLLOWING ADDRESS:

The Alabama Medical Cannabis Commission
c/o John McMillan, Director
P. O. Box 309585
Montgomery, Alabama 36130

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

ALABAMA ALWAYS, LLC,)	
)	
Plaintiff,)	
)	
v.)	Case No. _____
)	
STATE OF ALABAMA MEDICAL)	
CANNABIS COMMISSION,)	
)	
Defendant.)	

ORDER

For good cause shown, Plaintiff's Motion for Expedited Discovery in the above-styled cause is hereby **GRANTED**. It is hereby **ORDERED** that:

1. Subpoenas may be immediately served upon third parties without regard to the fifteen-day notice of intent requirement or any other timing requirement of Rule 45;
2. Persons or entities (parties or non-parties) served with a notice of deposition, request for production of documents, interrogatories, or subpoenas must:
 - a. Respond to all document requests within 7 days of the requests being served on them or their attorney;
 - b. Appear for deposition within at least 7 days of the service of a deposition notice on them or their attorneys; and
 - c. Refrain from disposing of any of the documents or materials related to the claims and conduct alleged in the verified complaint or otherwise discoverable under Alabama Rules of Civil Procedures.

DONE and ORDERED this _____ day of _____, 2023.

CIRCUIT JUDGE

EXHIBIT A

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

ALABAMA ALWAYS, LLC,)	
)	
Plaintiff,)	
)	
v.)	Case No. _____
)	
STATE OF ALABAMA MEDICAL)	
CANNABIS COMMISSION,)	
)	
Defendant.)	

PLAINTIFF'S INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

Plaintiff Alabama Always, LLC (Alabama Always) propounds the following interrogatories and requests for production pursuant to the Alabama Rules of Civil Procedure to Defendant State of Alabama Medical Cannabis Commission (the Commission) as follows:

DEFINITIONS

- A. The terms "AND" and "OR" shall be construed either disjunctively whenever appropriate in order to bring within the scope of these requests information or documents which might otherwise be considered to be beyond their scope.
- B. The term "COMMUNICATION" means any contact or act by which information or knowledge is transmitted or conveyed between two or more persons and includes, without limitation n: written contacts (whether by letter, electronic mail, memoranda or any other document or method) and oral contacts (whether by face-to-face meeting, telephone conversations or otherwise).
- C. The terms "CONCERNING" OR "RELATING TO" means referring, relating, reflecting or pertaining directly, in any way, to all or any part of a specified subject matter or document.
- D. The term "DOCUMENTS" includes, but is not limited to, all writings, notes, notations, correspondence, invoices, contracts, purchase orders, memoranda, books, pamphlets, brochures, proofs, displays, photographs, videotapes, digital video discs ("DVD"), Blue-ray discs ("BDAs"), models, films, drawings, sketches, illustrative materials, magnetic recording tapes, microfilms, and all other materials, whether printed, typewritten, recorded, or reproduced by any mechanical, electronic, optical or magnetic process.
- E. Whenever the identity of a document is required in response to a Request, that response shall include the title, date, author, signatories, recipients, general descriptions of such document, sufficient to be permitted to be identified with particularity in the Request for

Production, the present or last known location of such document, and the identity of the person or persons having custody, control, and possession of the document.

- a. The term "IDENTIFY" means a complete identification, to the full extent known or ascertainable by you, whether in your possession or subject to privilege, of the following information:
 - b. where the thing to be identified is an object, the present depository of such item and the name and address of the Person or Persons having custody of such item, unless the item is a public document;
 - c. where the thing to be identified is a legal person, such as a corporation, limited liability company, or other juridical creation, the full name of such legal person, its address, and the name and phone number of your contact with such legal person;
 - d. where the item to be identified is a Document, its nature, title, date, addressee or recipient, author, signatory, or sender as appropriate; and where the item to be identified is printed material, its title, author, publication, date, volume, and the relevant page numbers.
- F. The term "PERSON" means any natural person, firm, corporation, partnership, sole proprietorship, estate, trust, trust estate, joint venture, association or any other form of business entity of any nature or character, together with the partners, trustees, officers, directors, employees, attorneys or agents thereof.
- G. The term "SOUTH ALABAMA" means the University of South Alabama, or any agent or affiliate.
- H. The term "WORKAROUND" means any document related to the 10MB Upload Restriction and the submission of applications or exhibits in excess of 10MB.
- I. The term "YOU", "YOUR," or "COMMISSION" means the Commission and board members, directors, employees, agents, representatives, and any other person or entity associated with or affiliated with the Commission or who have information available to the Commission.
- J. The singular form of a word shall be interpreted as plural and the plural form of a word shall be interpreted as singular whenever appropriate in order to bring within the scope of the Interrogatory any information which might otherwise be considered to be beyond their scope.
- K. For each document identified herein, or otherwise referred to in your responses to these requests, which is no longer in existence, please state how such document passed out of existence, and identify each person having knowledge concerning its disposition.
- L. If you object to answering or fail to respond any request for any reason, describe the legal and/or factual basis for the objection, with sufficient specificity to permit the Court to decide the validity of the objection.
- M. Whenever the identity of an oral statement or communication is required in response to a request, that response shall include:

- a. the time and date of the statement of communication
- b. the identity of each person making or participating in the statement, or communication and each person who was present; and
- c. detailed description of what was said or the substance of the statement or communication.

INTERROGATORIES

1. Identify all applicants who received the workaround.

ANSWER:

2. State with specificity, including precise date and time, when the Commission posted notice of its June 16, 2023 meeting on its website.

ANSWER:

3. Identify any other notice that was given for the June 16, 2023 meeting, in addition to any notice identified in Interrogatory No. 2 above.

ANSWER:

4. Identify any and all persons who acted as scorers for the application review process.

ANSWER:

5. State when the Commission first became aware of inconsistencies or issues in the scoring or grading process.

ANSWER:

6. State how the Commission first became aware of any inconsistencies in the scoring or grading process, identifying any and all documents and individuals involved.

ANSWER:

7. State with specificity, including the precise time and date, when the Commission received the scoring materials from South Alabama.

ANSWER:

8. State with specificity, including the precise date and time, when the scoring

materials, and any recommendations, from South Alabama were first provided to the Commissioners for review.

ANSWER:

9. State the dates and times when deliberation on the applications occurred, including, but not limited to, all deliberation for the final vote approving the licenses.

ANSWER:

10. Identify the persons or companies being engaged to perform any additional scoring or review process.

ANSWER:

11. State who, and under what authority, authorized the contract with South Alabama.

ANSWER:

REQUESTS FOR PRODUCTION OF DOCUMENTS

1. Produce all documents sent by the Commission to South Alabama.

RESPONSE:

2. Produce all documents relating to scoring of applicants.

RESPONSE:

3. Produce a list of all license applicants who received the workaround.

RESPONSE:

4. Produce all documents relating to the scoring of the top five (5) applicants for an Integrated Facility license.

RESPONSE:

5. Produce all documents and communications between the Commission and South Alabama (or any affiliate or agent) relating to scoring or grading of applications,

staffing of the scoring or grading process.

RESPONSE:

6. Produce all contracts relating to the scoring of applications.

RESPONSE:

7. Produce all documents relating to site visits made by the Commission, its members, or agents thereof.

RESPONSE:

8. Produce all documents relating to the 10MB upload restriction.

RESPONSE:

9. Produce all documents relating to the workaround.

RESPONSE:

10. Produce Brittany Peters, John McMillan, Justin Aday, and Daniel Autry for depositions.

RESPONSE:

11. Produce all documents related to the qualifications of any person who scored applications.

RESPONSE:

12. Produce all documents relating to the engagement of persons to engage in, participate in, or assist with scoring.

RESPONSE:

13. Produce all documents relating to your selection of South Alabama for the staffing and scoring.

RESPONSE:

14. Produce all records including notes, minutes, video, or audio of the

Commission meetings.

RESPONSE:

15. Produce all documents regarding the identity of the entity who is going to perform the independent audit.

RESPONSE:

16. Produce all documents identifying the persons or companies being engaged to perform any additional scoring or review process.

RESPONSE:

Respectfully submitted,

/s/ William G. Somerville
WILLIAM G. SOMERVILLE
MICHAEL A. CATALANO
JADE E. SIPES
Attorneys for Plaintiff

**PLEASE SERVE DEFENDANT VIA CERTIFIED MAIL ALONG WITH THE
SUMMONS & COMPLAINT AT THE FOLLOWING ADDRESS:**

The Alabama Medical Cannabis Commission
c/o John McMillan, Director
P.O. Box 309585
Montgomery, Alabama 36130

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

ALABAMA ALWAYS, LLC,)	
)	
Plaintiff,)	
)	
v.)	Case No. _____
)	
STATE OF ALABAMA MEDICAL)	
CANNABIS COMMISSION,)	
)	
Defendants.)	

NOTICE OF DEPOSITION

PLEASE TAKE NOTICE that pursuant to the provisions of Rule 30 of the Alabama Rules of Civil Procedure, Plaintiff will take the deposition, by testimony upon oral examination for the purpose of discovery or for use as evidence in this cause, or for both purposes, of **Justin Aday** before a court reporter, notary public, or other official authorized to administer oaths and take depositions.

DEPONENT: JUSTIN ADAY

PLACE: BAKER DONELSON BEARMAN CALDWELL & BERKOWITZ, P.C.
1901 Sixth Avenue North, Suite 2600
Birmingham, Alabama 35203

DATE: TO BE DETERMINED

TIME: 9:00 a.m.

The deponent is requested to produce the following documents identified in **Schedule A**, attached hereto, to the extent that responsive documents have not already been produced by deponent to counsel for Plaintiffs.

The deposition will take place at the date, time, and location indicated above. The examination will continue from day to day until completed. You are invited to attend and cross-examine.

/s/ William G. Somerville
WILLIAM G. SOMERVILLE
MICHAEL A. CATALANO
JADE E. SIPES
Attorneys for Plaintiff

OF COUNSEL:

BAKER DONELSON BEARMAN
CALDWELL & BERKOWITZ, P.C.
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Birmingham, Alabama 35203
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mcatalano@bakerdonelson.com
jsipes@bakerdonelson.com

**PLEASE SERVE DEFENDANT VIA CERTIFIED MAIL ALONG WITH THE
SUMMONS & COMPLAINT AT THE FOLLOWING ADDRESS:**

The Alabama Medical Cannabis Commission
c/o John McMillan, Director
P. O. Box 309585
Montgomery, Alabama 36130

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

ALABAMA ALWAYS, LLC,)	
)	
Plaintiff,)	
)	
v.)	Case No. _____
)	
STATE OF ALABAMA MEDICAL)	
CANNABIS COMMISSION,)	
)	
Defendants.)	

NOTICE OF DEPOSITION

PLEASE TAKE NOTICE that pursuant to the provisions of Rule 30 of the Alabama Rules of Civil Procedure, Plaintiff will take the deposition, by testimony upon oral examination for the purpose of discovery or for use as evidence in this cause, or for both purposes, of **Daniel Autry** before a court reporter, notary public, or other official authorized to administer oaths and take depositions.

DEPONENT: DANIEL AUTRY

PLACE: BAKER DONELSON BEARMAN CALDWELL & BERKOWITZ, P.C.
1901 Sixth Avenue North, Suite 2600
Birmingham, Alabama 35203

DATE: TO BE DETERMINED

TIME: 9:00 a.m.

The deponent is requested to produce the following documents identified in **Schedule A**, attached hereto, to the extent that responsive documents have not already been produced by deponent to counsel for Plaintiff.

The deposition will take place at the date, time, and location indicated above. The examination will continue from day to day until completed. You are invited to attend and cross-examine.

/s/ William G. Somerville
WILLIAM G. SOMERVILLE
MICHAEL A. CATALANO
JADE E. SIPES
Attorneys for Plaintiff

OF COUNSEL:

BAKER DONELSON BEARMAN
CALDWELL & BERKOWITZ, P.C.
1901 Sixth Avenue North, Suite 2600
Birmingham, Alabama 35203
Tel. 205-328-0480

wsomerville@bakerdonelson.com

mcatalano@bakerdonelson.com

jsipes@bakerdonelson.com

**PLEASE SERVE DEFENDANT VIA CERTIFIED MAIL ALONG WITH THE
SUMMONS & COMPLAINT AT THE FOLLOWING ADDRESS:**

The Alabama Medical Cannabis Commission
c/o John McMillan
P. O. Box 309585
Montgomery, Alabama 36130

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

ALABAMA ALWAYS, LLC,)	
)	
Plaintiff,)	
)	
v.)	Case No. _____
)	
STATE OF ALABAMA MEDICAL)	
CANNABIS COMMISSION,)	
)	
Defendants.)	

NOTICE OF DEPOSITION

PLEASE TAKE NOTICE that pursuant to the provisions of Rule 30 of the Alabama Rules of Civil Procedure, Plaintiff will take the deposition, by testimony upon oral examination for the purpose of discovery or for use as evidence in this cause, or for both purposes, of **John McMillan** before a court reporter, notary public, or other official authorized to administer oaths and take depositions.

DEPONENT: JOHN MCMILLAN

PLACE: BAKER DONELSON BEARMAN CALDWELL &
 BERKOWITZ, P.C.
 1901 Sixth Avenue North, Suite 2600
 Birmingham, Alabama 35203

DATE: TO BE DETERMINED

TIME: 9:00 a.m.

The deponent is requested to produce the following documents identified in **Schedule A**, attached hereto, to the extent that responsive documents have not already been produced by deponent to counsel for Plaintiff.

The deposition will take place at the date, time, and location indicated above. The examination will continue from day to day until completed. You are invited to attend and cross-examine.

/s/ William G. Somerville
WILLIAM G. SOMERVILLE
MICHAEL A. CATALANO
JADE E. SIPES
Attorneys for Plaintiff

OF COUNSEL:

BAKER DONELSON BEARMAN
CALDWELL & BERKOWITZ, P.C.
1901 Sixth Avenue North, Suite 2600
Birmingham, Alabama 35203
Tel. 205-328-0480

wsomerville@bakerdonelson.com

mcatalano@bakerdonelson.com

jsipes@bakerdonelson.com

**PLEASE SERVE DEFENDANT VIA CERTIFIED MAIL ALONG WITH THE
SUMMONS & COMPLAINT AT THE FOLLOWING ADDRESS:**

The Alabama Medical Cannabis Commission
c/o John McMillan
P. O. Box 309585
Montgomery, Alabama 36130

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

ALABAMA ALWAYS, LLC,)	
)	
Plaintiff,)	
)	
v.)	Case No. _____
)	
STATE OF ALABAMA MEDICAL)	
CANNABIS COMMISSION,)	
)	
Defendants.)	

NOTICE OF DEPOSITION

PLEASE TAKE NOTICE that pursuant to the provisions of Rule 30 of the Alabama Rules of Civil Procedure, Plaintiff will take the deposition, by testimony upon oral examination for the purpose of discovery or for use as evidence in this cause, or for both purposes, of **Brittany Peters** before a court reporter, notary public, or other official authorized to administer oaths and take depositions.

DEPONENT: BRITTANY PETERS

PLACE: BAKER DONELSON BEARMAN CALDWELL &
 BERKOWITZ, P.C.
 1901 Sixth Avenue North, Suite 2600
 Birmingham, Alabama 35203

DATE: TO BE DETERMINED

TIME: 9:00 a.m.

The deponent is requested to produce the following documents identified in **Schedule A**, attached hereto, to the extent that responsive documents have not already been produced by deponent to counsel for Plaintiff.

The deposition will take place at the date, time, and location indicated above. The examination will continue from day to day until completed. You are invited to attend and cross-examine.

/s/ William G. Somerville
WILLIAM G. SOMERVILLE
MICHAEL A. CATALANO
JADE E. SIPES
Attorneys for Plaintiff

OF COUNSEL:

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