

- 1 Q. So there's a ten megabyte limit on the
2 size of limits -- on the size of exhibits
3 that could be uploaded to the portal,
4 right?
- 5 A. That's correct.
- 6 Q. When did you first learn of that limit?
- 7 A. Whenever we were going through the testing
8 of the application portal.
- 9 Q. I show you what I've marked as Defendant's
10 Exhibit 5.
- 11 MR. SOMERVILLE: This will be Exhibit
12 B to the response to the request for
13 production.
- 14 Q. Are you familiar with that?
- 15 A. I am.
- 16 Q. Can you tell us what it is?
- 17 A. It's an email that we pulled in response
18 to request for discovery.
- 19 Q. It look like a couple of emails, actually?
- 20 A. Okay.
- 21 Q. The first one is an email from -- from
22 Elizabeth Kotowski to you. It looks like
23 to Brittany Peters.
- 24 A. Uh-huh. (Positive response.)
- 25 Q. It looks like it's on December 21st.

- 1 A. Yes.
- 2 Q. And at the bottom, it says: Good
3 afternoon, Liz. Can you read that to me?
- 4 A. Good afternoon, Liz. An applicant has
5 inquired about the ten megabyte limit on
6 the document uploads tab. Is there any
7 way that can be increased or do you have a
8 recommendation on a work-around?
- 9 Q. And you say you knew about the ten
10 megabyte limit before that?
- 11 A. Yes.
- 12 Q. Do you know roughly when that was that you
13 learned about it?
- 14 A. It would have been prior to the
15 application going live, but I don't know
16 the exact date.
- 17 Q. And the response was what?
- 18 A. There are PDF compressors found using a
19 Google search they can use to decrease the
20 file size.
- 21 Q. So did y'all make any additional inquiry
22 other than -- in this email about whether
23 this ten megabyte limit could be
24 increased?
- 25 A. No.

1 Q. And you didn't really get a response to
2 this, did you?

3 A. We got a response that they could use PDF
4 compressors.

5 Q. To decrease the file size?

6 A. To decrease the file size.

7 Q. But it didn't say here that the file size
8 can't be increased, did it -- the upload
9 amount couldn't be increased, did it?

10 A. No.

11 Q. Okay. Then I want to refer you to the
12 next page. You've got an email dated
13 Wednesday, December 28th at 10:17 a.m. --

14 A. Yes.

15 Q. -- from you to Tanner Epperson.

16 A. Yes.

17 Q. Tanner is asking you have you responded to
18 somebody. Do you know who that is? Is
19 that Priya, by any chance?

20 A. I believe it was, yes.

21 Q. And you said you did respond to probably
22 Priya, right?

23 A. That's correct.

24 Q. And you said thank you.

25 And then on the last page, it says,

1 we've received -- this is you to Tanner
2 again -- we've received several inquiries
3 from applicants about how to work around
4 the ten megabyte file size limit.

5 And then it says: I saw your email
6 with the support request you-all received
7 on the matter.

8 I assume he's talking about the ten
9 megabyte file size limit, correct?

10 A. She is.

11 Q. She is. Is Tanner a --

12 A. A female.

13 Q. -- a female?

14 A. Yes.

15 Q. That email that we're talking about is
16 dated December 28th at 9:21. Do you see
17 that?

18 A. That's correct.

19 Q. But it refers to an email that must have
20 been previous to that because you said I
21 saw your email with the support request
22 you-all received on the matter.

23 A. Correct.

24 Q. Right? Do we know where this email is?

25 A. It's the email that -- it was produced --

1 in which Priya emailed both
2 applications@amcc.alabama.gov and
3 support@alabamainteractive at the same
4 time.

5 Q. So -- but it said I saw your email. Was
6 there another email from Tanner?

7 A. No, that's the email.

8 Q. So you knew about the ten megabyte limit.
9 And you knew or had reason to know that a
10 lot of applications would come the last
11 few days, correct?

12 A. We knew about the ten megabyte limit. And
13 we knew how many people were eligible to
14 apply.

15 Q. And you knew that you would get a lot more
16 applications or expected --

17 A. I didn't know how many we would get. I
18 don't know what a lot more means. But I
19 don't know how many we would get, but we
20 were prepared to receive them until the
21 deadline.

22 Q. Well, you got a lot more than ten?

23 A. We knew that the universe was six hundred
24 and seven of who could of submit an
25 application.

1 Q. So you were prepared to receive a lot more
2 than ten the last --

3 A. We were prepared to receive up to six
4 hundred and seven.

5 Q. Okay. Now, the ten megabyte requirement
6 wasn't in the rules and regulations, was
7 it?

8 A. It was not.

9 Q. It wasn't in the application guide, was
10 it?

11 A. It was not.

12 Q. It wasn't on the website, was it?

13 A. It was not on the AMCC website.

14 Q. Was it on another website?

15 A. Yes.

16 Q. What website was that?

17 A. The application portal.

18 Q. The application portal. Okay. The only
19 place where it was was on the FAQs that
20 were on the portal that were only
21 successful after the potential applicant
22 logged in, right?

23 A. Correct.

24 Q. Is there anything in the dispensary
25 application guide or anywhere else outside

- 1 --
- 2 A. Let me correct the response that I gave to
- 3 your previous question. It was not -- it
- 4 was accessible before the applicant logged
- 5 in. So there's a -- the banner that says
- 6 FAQs appears every time they log in unless
- 7 they dismiss that before they log in.
- 8 Q. Is there anything in the dispensary
- 9 application guide that says the applicants
- 10 should review the FAQs before attempting
- 11 to file an application?
- 12 A. I'm not aware specifically, but, I mean, I
- 13 can't quote the whole thing.
- 14 Q. Well, if you want me to show you a copy
- 15 and we can go through it? Can you -- you
- 16 say you don't remember anything in there.
- 17 A. I don't recall if that statement is in
- 18 there.
- 19 Q. And there's nothing in there that says
- 20 they should review the FAQs before
- 21 attempting to file an application?
- 22 A. I don't recall if it's in there or not.
- 23 Q. In fact, the guide says on page two that
- 24 the applicants are strongly encouraged to
- 25 read the act and the rules, correct?

1 A. I'm sure it does.

2 Q. Does it say that they ought to read
3 anything else?

4 A. I don't know -- I mean, I don't know.

5 Q. I'm going to show you some emails that you
6 produced in response to Redbud's request
7 for production.

8 A. Okay.

9 Q. I marked this exhibit as Plaintiff's
10 Exhibit 6.

11 A. Okay.

12 MR. SOMERVILLE: Your Honor.

13 THE COURT: Thank you, Will.

14 MR. SOMERVILLE: I've got more.

15 MR. WEBSTER: Have you got copies
16 of those?

17 MR. SOMERVILLE: I said I have
18 more.

19 MR. WEBSTER: Oh, okay. I
20 thought you said you had more exhibits,
21 not more copies. Thank you.

22 This is 6?

23 MR. SOMERVILLE: Yes. This is
24 Exhibit A to their response to Redbud's
25 request for production. You also have

1 that. And I think it's identical to
2 what's produced to y'all.

3 Q. If you look on the first page -- first of
4 all, can you identify these documents?

5 A. Yes, these are documents that we produced
6 in response to discovery. They were
7 communications between AMCC and the
8 individuals who contacted us regarding the
9 ten megabyte limit.

10 Q. These are documents that y'all collected.
11 And they should be all of the
12 communications between you -- that is, the
13 commission -- and applicants relating to
14 the ten megabyte limit, correct?

15 A. That's what we were able to find in
16 preparing for the response.

17 Q. So, the first one is dated -- the first
18 date we can see on the first one is
19 Thursday, December 22nd, 2022. Do you see
20 that?

21 A. Correct, yes.

22 Q. And you can't really tell what it says on
23 the second page because it's been blacked
24 out, but it says Exhibit 22 requires
25 substantial information such as equipment,

1 manuals and such. It looks like this was
2 a question that the applicant asked y'all?

3 A. Uh-huh. (Positive response.)

4 Q. And then, following that, it says: Will
5 the commission be updating the portal to
6 permit higher data uploads beyond ten
7 megabytes for specific exhibits.

8 Do you see that?

9 A. Yes.

10 Q. And it looks like to me everything after
11 that is your response?

12 A. That's correct.

13 Q. Okay. Will you read the response to us,
14 please?

15 A. The ten megabyte file size limit will not
16 be increased. The application portal
17 developer has recommended use of a PDF
18 compressor to reduce the file size. If
19 this does not work to reduce the file size
20 to ten megabytes or less, please follow up
21 and we will consider other options.

22 If the applicant is unable to reduce the
23 file size to ten megabytes or less, then
24 the attachment should be properly
25 referenced in the exhibit, with a notation

- 1 that the attachment is being provided
2 separately via USB. The referenced
3 attachment should then be loaded onto a
4 USB that is submitted to AMCC, along with
5 the other two USBs that are required, in
6 accordance with Section 1.8 of the
7 application guide.
- 8 Q. Now, some amount of this language became a
9 fairly standard response from y'all in
10 response to this question?
- 11 A. Yes.
- 12 Q. Can you tell us which part of it it was?
- 13 A. That the ten megabyte file size will not
14 be increased. The developer has
15 recommended use of a PDF compressor to
16 reduce the file size, and that if the
17 files could not be reduced to ten megabyte
18 or less, then the attachments could be --
19 the uploaded attachments could be
20 referenced in the exhibit with a notation
21 that the full size is being provided
22 separately via USB.
- 23 Q. If you'll look back at the Defendant's
24 Exhibit 5.
- 25 A. Okay.

- 1 Q. The last page of that.
- 2 A. Yes.
- 3 Q. Your email to Tanner says below is the
4 guidance we've given to those who have
5 inquired?
- 6 A. Yes.
- 7 Q. And it looks like the language beginning
8 with, if this does not work to reduce the
9 file size to ten megabytes -- I'm sorry.
10 If it does not work to reduce file size to
11 ten megabytes or less, then the
12 attachments should be properly referenced.
13 From there, the language in both of these
14 is about the same, correct?
- 15 A. Correct.
- 16 Q. And that became a standardized response
17 that y'all used in responding to inquiries
18 about the ten megabyte limit, correct?
- 19 A. Correct.
- 20 Q. And when y'all began that, was this email
21 dated December 22nd, 2022 at 8:48 p.m. the
22 first time y'all used that particular
23 language in responding to inquiries about
24 the ten megabyte file size limit?
- 25 A. The -- our response would have been on

- 1 December 23rd at 9:01 a.m.
- 2 Q. I see. So, Friday, December 23rd is when
- 3 y'all first started using that?
- 4 A. I think that's correct.
- 5 Q. Look at the next emails, Exhibit A2 of --
- 6 the top right-hand side of the page --
- 7 corner of the page.
- 8 A. Yes.
- 9 Q. And you tell this applicant, whoever it
- 10 is, the same thing, correct?
- 11 A. Correct.
- 12 Q. And it looks like the same is true on A3,
- 13 which was Friday, December 23rd?
- 14 A. Correct.
- 15 Q. A4?
- 16 A. Correct.
- 17 Q. On -- also, on Friday, December 23rd.
- 18 Then on Tuesday, December 27th?
- 19 A. Correct.
- 20 Q. So December 23rd was exactly one week
- 21 prior to the deadline, correct?
- 22 A. That's correct.
- 23 Q. And you still had six hundred potential
- 24 applications outstanding, correct?
- 25 A. I don't know on December 23rd how many,

1 but we had only received a few, yes.

2 Q. You had received -- we know it was less

3 than nine you had received by then, right?

4 A. That may be correct. I mean, I don't know

5 without looking specifically.

6 Q. Well, you acknowledged a few minutes ago

7 that on December 28th you had only

8 received nine, right?

9 A. I don't remember if -- acknowledging that

10 specifically.

11 Q. Well, let's see. You had at least four

12 hundred applications outstanding, because

13 you only received a hundred and something

14 applications out of the total of six

15 hundred requests for applications, right?

16 A. So, over five hundred, yes.

17 Q. Okay. And on to A7, which is Wednesday,

18 December 28th --

19 A. Yes.

20 Q. -- same language?

21 A. Yes.

22 Q. A8?

23 A. Yes.

24 Q. Also, Wednesday, December 28th, the same

25 language.

1 A9 --

2 A. Yes.

3 Q. -- December 28th, same language, correct?

4 A. Correct.

5 Q. On December 29th, also, same language?

6 A. Correct.

7 Q. That's A10.

8 On A11 --

9 A. Correct.

10 Q. -- it looks like about the same language,

11 correct, at the bottom of the page,

12 December 28th?

13 A. Correct.

14 Q. And A12 --

15 A. Correct.

16 Q. -- which is December 29th --

17 A. Correct.

18 Q. -- same language, correct?

19 A. Correct.

20 Q. On A13 --

21 A. Correct.

22 Q. -- identical language, correct?

23 A. Correct.

24 Q. A14, identical language?

25 A. Correct.

1 Q. A15, which is Friday, December 30th --

2 A. Correct.

3 Q. -- same language, correct?

4 A. Correct.

5 Q. A16, which is Friday, December 30th, same

6 language, correct?

7 A. Correct.

8 Q. That's at 1:18 p.m.?

9 A. Correct.

10 Q. I notice the -- let's see. On A17 --

11 A. Correct.

12 Q. -- same language, correct?

13 A. Correct.

14 Q. That was on Friday, December 30th?

15 A. Correct.

16 Q. Let's see look at A18.

17 A. Okay.

18 Q. Do you know who this is from?

19 A. I don't know. I don't know.

20 Q. This is a request to deal with it after

21 December 30th, correct?

22 A. Correct.

23 Q. And they asked to schedule a meeting; is

24 that correct?

25 A. Correct.

1 Q. Did y'all schedule one?

2 A. We did not.

3 Q. And the same with A19, correct?

4 A. Correct.

5 Q. And you did not schedule a meeting,

6 correct?

7 A. Correct.

8 Q. Did it ever occur to you that other

9 applicants who didn't email you might have

10 issues with the ten megabyte file size

11 limit?

12 A. I don't know if they were having issues or

13 not.

14 Q. I didn't ask you whether you knew they

15 did. I asked you did it ever occur to you

16 that they might?

17 A. I don't recall if it occurred or not.

18 Q. Okay. How did y'all decide what language

19 to put in that standardized response to

20 the ten megabyte inquiry?

21 A. We looked at what, you know, possible

22 options may be given the timing of the

23 requests that were being made, given the

24 nature of what was being described to

25 us -- it was a technical support request,

- 1 essentially -- and then tried to measure
2 that against what would be a reasonable
3 response to those who were having the
4 issue.
- 5 Q. When you said we looked at this or that,
6 who is we?
- 7 A. It would have been the staff and the --
8 I'm sure there were some consultation,
9 like we talked about previously, with the
10 developer of the portal.
- 11 Q. I don't want to know you're sure what
12 might have happened. I want to know what
13 you recall did happen. Who did you speak
14 to about it, and what did y'all decide?
- 15 A. We spoke to the developer.
- 16 Q. Who with the developer?
- 17 A. The emails that you saw, Liz and Tanner.
- 18 Q. Were there any emails other than the ones
19 you produced where you had discussion by
20 email with Tanner and whoever else at the
21 developer?
- 22 A. Not that I'm aware of, but -- I mean, this
23 is what we pulled in response that we were
24 able to find.
- 25 Q. Okay. So on -- the only email we can find

1 where you're talking to Tanner about it is
2 on December 28th, I think?

3 A. Correct.

4 Q. At 9:21 a.m.?

5 A. Correct.

6 Q. Where you're providing the language to
7 her?

8 A. Correct.

9 Q. Don't you think it would be logical that
10 if you had collaboratively with her come
11 up with the language she would have
12 already had the language that you had been
13 using for five days?

14 A. I don't know that we collaborated with
15 Tyler Technologies on the language at all.
16 We asked them what the options were on the
17 their end, which is the response that we
18 got that was that they could use a PDF
19 compress.

20 Q. So my question is how did you come up with
21 the language? Who at the commission
22 decided to come up with this language,
23 this standardized response to this inquiry
24 about the ten megabyte issue?

25 A. We did that collectively as a staff.

- 1 Q. Okay. Who on your staff participated in
2 that decision?
- 3 A. That would have been me, Mr. McMillan,
4 Mr. Autrey and Ms. Peters.
- 5 Q. Did y'all -- how did y'all -- where were
6 you when you made the decision?
- 7 A. We were at the office.
- 8 Q. You know that we asked y'all for internal
9 communications at the AMCC relating to the
10 ten megabyte issue, correct?
- 11 A. Correct.
- 12 Q. And you produced nothing, correct?
- 13 A. We didn't.
- 14 Q. Okay. Is that because there are no emails
15 between you and other people at the
16 commission about this ten megabyte issue?
- 17 A. That's correct.
- 18 Q. So, if you didn't do it by email, how did
19 you do it?
- 20 A. We sat in a room and discussed it, I'm
21 sure.
- 22 Q. Do you recall when you sat in the room and
23 discussed it?
- 24 A. I don't recall the date.
- 25 Q. Do you recall sitting in a room and

- 1 discussing it or are you just sure you did
2 it? Looking back, you think you did it?
- 3 A. We had discussions on the questions, as we
4 did on many questions.
- 5 Q. Do you have a specific recollection of
6 sitting in a room with you, Mr. McMillan,
7 Mr. Autrey and Ms. Peters to discuss and
8 come up with this standardized language
9 that you decided to use to respond to
10 inquiries about the ten megabyte issue?
- 11 A. I don't have specific recollection of the
12 specific meeting that we had. I suppose
13 that it was in a meeting that we had
14 discussing a number of issues.
- 15 Q. Did anybody come up with a draft of an
16 email of language that you would send to
17 people in response so you could review it
18 and decide whether it was appropriate?
- 19 A. I don't recall if we did or not. We --
- 20 Q. Did y'all just sort of hand write it on a
21 piece of paper?
- 22 A. I don't recall.
- 23 Q. And then reduce it to an email?
- 24 A. I don't recall.
- 25 Q. In that meeting -- or those meetings you

1 had with you and these three other
2 officials at the commission, did you talk
3 about the possibility of bringing this
4 language to the attention of the members
5 of the commission?

6 A. I don't recall us having that discussion.

7 Q. Did y'all make a decision to inform
8 anybody -- I'm sorry. Withdraw that.

9 Did you discuss the possibility of
10 informing people other than potential
11 applicants who made an inquiry
12 specifically about that?

13 A. I don't recall us discussing that.

14 Q. So the decision was made that you would
15 simply respond with this language to
16 people who made inquiries about the ten
17 megabyte issue through the portal; is that
18 correct?

19 A. So the standard procedure was that, as
20 inquiries were made through the portal, we
21 responded to those who inquired. And if
22 we had any questions or discussions on
23 what those responses may be, whether
24 they're relevant to the ten megabyte issue
25 or others, then we would respond once we

- 1 had an answer.
- 2 Q. So that wasn't my question. My question
- 3 was you made a decision to give this
- 4 language only to people who responded --
- 5 who inquired about the ten megabyte
- 6 requirement through the portal, correct?
- 7 A. That was what we did, consistent with what
- 8 we had done with other questions.
- 9 Q. And, again, it never occurred to you that
- 10 these other potentially hundreds of
- 11 applicants who didn't ask about the ten
- 12 megabyte issue might have issues with it?
- 13 A. I don't recall that occurring.
- 14 Q. In y'all's discussions, did you ever
- 15 discuss how much data can be placed on a
- 16 USB drive?
- 17 A. No.
- 18 Q. Do you know whether more than ten
- 19 megabytes can be placed on a USB drive?
- 20 A. If it's a USB drive that holds more than
- 21 ten megabyte, it can.
- 22 Q. How much can they hold?
- 23 A. I guess it depends on what they're made
- 24 for.
- 25 Q. Well, can they hold maybe up to a