



IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

ALABAMA ALWAYS LLC,)	
CAPITOL MEDICAL, LLC,)	
FFD ALABAMA HOLDINGS, LLC,)	
FFD ALABAMA HOLDINGS, LLC ET AL,)	
Plaintiffs,)	
)	
V.)	Case No.: CV-2023-000231.00
)	
STATE OF ALABAMA MEDICAL)	
CANNABIS COMMISSION,)	
Defendant.)	

TEMPORARY RESTRAINING ORDER

This Document Also Relates to the Following Actions:

- Alabama Always, LLC v. AMCC, CV 2023-901727*
- Yellowhammer Medical Dispensaries, LLC v. AMCC, CV 2023-901798*
- Jemmstone Alabama, LLC v. AMCC, CV 2023-901800*
- 3 Notch Roots, LLC v. AMCC, CV 2023-901801*
- Pure by Sirmon Farms, LLC v. AMCC, CV 2023-901802*

On December 28, 2023 at 10:00 a.m., the Court heard a number of motions for preliminary injunction and temporary restraining order (the "Motions") filed by Plaintiffs Alabama Always, LLC (Doc. 40 in CV 2023-901727); INSA Alabama, LLC (Doc. 559 in Master Case); Theratrue Alabama, LLC (Doc. 520 in Master Case), Jemmstone Alabama, LLC; (within Doc. 2 in CV 2023-901800); 3 Notch Roots, LLC (Doc. 3 in CV 2023-901801); and Southeast Cannabis, LLC (Doc. 540 in Master Case). Pre-hearing notice was provided to Defendant Alabama Medical Cannabis Commission (the "Commission") and other interested parties before the hearing, and counsel for the Commission and other interested parties were present and presented argument.

Some of the background for this present order is set out in the Court's post-

hearing Temporary Restraining Order relating to Yellowhammer Medical Dispensaries, LLC (the "Yellowhammer Orders," Docs. 590 & 592). The Yellowhammer Orders concerned certain motions filed by medical cannabis license applicants in the Cultivator and Dispensary license categories. Plaintiffs in the present Motions are all unsuccessful applicants for Integrated Facility licenses. They seek injunctive relief to stay the Commission's award of medical cannabis licenses for Integrated Facilities, purportedly awarded by the Commission on December 12, 2023. Integrated licenses are to be issued by the Commission, without further Commission action, on January 9, 2023. Of relevance here, Plaintiffs claim, as referenced in the Court's Yellowhammer Orders, that the Commission failed to follow its scoring rules in the December 12, 2023 license awards. Plaintiffs have argued, *inter alia*, that because of the limited number of licenses that the Commission is statutorily authorized to issue in the Integrated Facility category, the Commission's investigative hearing procedure will be completely ineffectual absent an immediate injunction.

During the December 28 hearing, the Court apprised the parties that it would issue a ruling after the Commission's December 28 meeting, at which the Commission would consider whether to issue its own stay of the licensure process. The Court was thereafter informed that the Commission passed a motion during its December 28 meeting refusing to issue any stay regarding its licensure processes.

The four elements necessary to establish entitlement to immediate or preliminary injunctive relief are well known.

First, there must be at least a reasonable chance of success on the merits of the claims at issue. Plaintiffs contend the Commission violated its own Rules in awarding

licenses on December 1. The Court heard extensive argument about these issues on the record on December 28, 2023. One such contention is that the Commission did not comply with its scoring, averaging and ranking rules (Ala. Admin. Code rr. 538-x-3-.10 and -.11). From the arguments made at the December 28, 2023 hearing, the Court concludes there is at least a reasonable chance of success on the merits of those claims.

Second, Plaintiffs must establish the threat of immediate and irreparable injury. Plaintiffs have met that element as well. Each is an applicant for an Integrated Facility license, a license category in which the Commission had purportedly awarded its statutory maximum number of licenses, thus rendering the investigative hearing process likely insufficient to provide these Plaintiffs a meaningful avenue for review of the Commission's adverse licensing decision. As noted above, the Commission met after the December 28, 2023 hearing before this Court and passed a Motion refusing to impose any administrative stay on the licensing process. Commission counsel advised the Court, on the record on December 28, that Integrated Facility licenses are to be issued on January 9, 2024. Based on the Commission's action on the afternoon of December 28 and the threat of immediate license issuance on January 9, Plaintiffs face an immediate threat of irreparable injury if the Commission is not enjoined from issuing Integrated Facility licenses.

Third, the Court finds that the Commission will suffer no hardship if immediate injunctive relief is granted. The Commission argued to the Court that delays would affect its ability to get medicine to needy patients. While the Court is sympathetic to that concern, that concern is not injurious to the Commission itself, and regardless, that

concern has existed since the Commission's first set of licensing decisions came under attack, now six months ago.

Fourth, the public interest and the balancing of equities favors granting immediate injunctive relief. Again, the Court is sympathetic to the public interest in getting medicine in the hands of patients. That said, the Commission's third round of licensing awards is at issue, and the prior two award rounds remain the subject of ongoing litigation – meaning that the Commission's effort to issue licenses now, based on the third round, is already on uneven ground. On this point, the Court has also taken into account the post-hearing filings of Sustainable Alabama, LLC and Flowerwood Medical Cannabis, LLC (Docs. 615 & 622 in Master File), in which they argue licenses should immediately issue to them because they are "three-time" awardees and that the public interest has not been appropriately weighed in prior injunctions. While the Court understands those parties' frustrations, the Court also notes that all three rounds of awards have been challenged as legally infirm: the first two rounds of awards were abandoned by action of the Commission itself, and now there is a serious question as to whether the third round is also invalid. Moreover, both the statute at issue and the public policy of the State of Alabama require that the State's business be conducted in accordance with the Alabama Administrative Procedures Act, and the serious questions as to compliance with the AAPA is a serious public interest concern. Finally, any balancing of the equities here weighs heavily in favor of Plaintiffs, whose injury will very likely be irreparable if immediate injunctive relief is denied and the Commission issues licenses, thus virtually eliminating any reasonable chance for Plaintiffs to obtain any meaningful review of the adverse licensing decision.

Based on the foregoing, the four factors here weigh in favor of granting immediate injunctive relief to Plaintiffs as to the Integrated Facility license category.


Accordingly, it is hereby **ORDERED, ADJUDGED, and DECREED** as follows:

2. The Motions filed by Plaintiffs Alabama Always, LLC (Doc. 40 in CV 2023-901727); INSA Alabama, LLC (Doc. 559 in Master Case); Theratrue Alabama, LLC (Doc. 520 in Master Case), Jemmstone Alabama, LLC; (within Doc. 2 in CV 2023-901800); 3 Notch Roots, LLC (Doc. 3 in CV 2023-901801); and Southeast Cannabis, LLC (Doc. 540 in Master Case), are **GRANTED IN PART**. Specifically, the Commission, its officers, agents, servants, employees, attorneys, and other persons acting in active concert or participation with them who receive notice of this order by service or otherwise, are **ENJOINED and RESTRAINED** from taking any action in furtherance of the December 12, 2023 awards of licenses in the Integrated Facility license category, including without limitation the issuance of any licenses. The intent of the Court that all rights of all applicants shall be preserved.

3. This Order is conditioned upon each Plaintiff's posting bond in the amount of \$25,000.00, in a form satisfactory to the Clerk of Court.

4. The Court will set a hearing on Motions for Preliminary Injunction and requests for discovery by separate Order.

DONE this 3rd day of January, 2024.



CIRCUIT JUDGE