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Alabama Court of Civil Appeals	CL-2024-0073	Motion - Dismiss	1	\$ 0.00
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IN THE ALABAMA COURT OF CIVIL APPEALS

Ex parte State of Alabama Medical Cannabis Commission

In re: Alabama Always, LLC, *et al.*

v.

State of Alabama Medical Cannabis Commission

**On Petition for Writ of Mandamus to the Circuit Court of
Montgomery County (03-CV-2023-000231.00)**

(The Honorable James H. Anderson, Circuit Judge, Presiding)

**RESPONDENTS ALABAMA ALWAYS, LLC, INSA ALABAMA,
LLC, JEMMSTONE ALABAMA, LLC, AND BRAGG CANNA OF
ALABAMA, LLC'S JOINT MOTION TO DISMISS**

Respondents Alabama Always, LLC, Insa Alabama, LLC, Jemmstone Alabama, LLC, and Bragg Canna of Alabama, LLC respectfully move this Court to dismiss the petition for writ of mandamus filed by the State of Alabama Medical Cannabis Medical Commission (the Commission) for the following reasons:

The Commission's petition violates the general prohibition, set

forth in *Ex parte Ocwen Federal Bank*, 872 So. 2d 872 (Ala. 2003), against challenging discovery orders by mandamus because discovery matters are generally left to the sound discretion of the circuit court. *See id.* at 813 (“Discovery matters are within the trial court’s sound discretion, and this Court will not reverse a trial court's ruling on a discovery issue unless the trial court has clearly exceeded its discretion.”).

Since *Ocwen*, the Supreme Court has recognized four categories of cases in which discovery orders may be challenged by mandamus: (1) when a privilege is disregarded; (2) orders requiring a party to produce patently duplicative and burdensome documents, resulting in harassment or clearly undue and disproportionate burden; (3) “when the trial court either imposes sanctions effectively precluding a decision on the merits or denies discovery going to a party's entire action or defense”; and (4) when the trial court impermissibly prevents a party from making a record, thus preventing a discovery issue from being preserved for appellate review. *Ex parte Orkin Inc.*, 960 So. 2d 635, 638 (Ala. 2006).

The Commission’s petition falls within *none* of the recognized exceptions to the general rule against mandamus review of discovery orders. The Circuit Court has been grappling with issues concerning the

Commission's licensing process for months and has developed a measured discovery plan to address these issues—something that is well within its discretion.

I. The Petition does not fall within any of the four exceptions to the general prohibition against mandamus review of discovery orders.

Boiled down to its essence, the Commission's argument goes like this: plaintiffs-respondents have not stated cognizable claims (whether under the Open Meetings Act or the Alabama Administrative Procedure Act), and therefore have not properly invoked the circuit court's jurisdiction.¹ Because the plaintiffs have not properly stated a claim for an OMA or AAPA violation, the argument goes, they should not be permitted to engage in discovery. As clearly set forth in the petition's statement of the issues presented, the Commission is merely complaining

¹ To the extent that the Commission complains about the substance of plaintiffs' pleadings, the Commission has *not* filed a motion to dismiss, which is the only appropriate vehicle for testing the sufficiency of a complaint. Even if the Commission does so, the denial of a motion to dismiss is also generally not the proper subject of a writ of mandamus, unless some immunity doctrine applies or subject-matter jurisdiction is lacking. *See Ex parte Liberty Nat'l Life Ins. Co.*, 825 So. 2d 758, 761–62 (Ala. 2002) (noting that “[s]ubject to certain narrow exceptions not applicable here, we have held that, because an “adequate remedy” exists by way of an appeal, the denial of a motion to dismiss or a motion for a summary judgment is not reviewable by petition for writ of mandamus.”).

(1) that the plaintiffs did not exhaust their administrative remedies before seeking relief from the Circuit Court and (2) that the Commission somehow has a right not to engage in discovery under the OMA until certain procedural requirements under that Act are satisfied. Again, neither of these arguments remotely falls within any of the four *Ex parte Orkin* exceptions to the prohibition against mandamus review of discovery orders.

II. The Commission’s exhaustion argument is incorrect.

Even if exhaustion fell within one of the four recognized exceptions to the general prohibition against mandamus review of discovery orders (it doesn’t), the Commission’s argument is still nonsensical.

Under Alabama law, “exhaustion of administrative remedies is a judicially imposed prudential limitation, *not* an issue of subject-matter jurisdiction.” *Budget Inn of Daphne, Inc. v. City of Daphne*, 789 So. 2d 154, 157 (Ala. 2000) (emphasis added). Alabama cases recognize four exceptions to the doctrine: where “(1) the question raised is one of interpretation of a statute, (2) the action raises only questions of law and not matters requiring administrative discretion or an administrative finding of fact, (3) the exhaustion of administrative remedies would be

futile and/or the available remedy is inadequate, or (4) where there is the threat of irreparable injury.” *Id.* (quoting *Ex parte Lake Forest Prop. Owners’ Ass’n*, 603 So. 2d 1045, 1046–47 (Ala. 1992)).

It is clear that the Circuit Court found that there was a threat of irreparable injury here.²

At the hearing on the TRO motions before the Circuit Court on December 28, 2023, the parties argued extensively about the futility of the purported administrative remedy—namely, the investigative hearing process. (*See, e.g.*, the December 28, 2023 hearing transcript, which is attached as **Exhibit A**, at 20:9–15 (“Well, we don’t have an administrative remedy because if they go forward issuing five integrated licenses, there are no more integrated licenses to give out. So we go through an investigative hearing and we have nothing left. There’s no way to unwind things.”); *id.* at 81:4–9 (“And the point is that we’re going into this investigative hearing process, the process is irremediably flawed

² Although the Circuit Court did not specifically include the term “exhaustion” in its TRO, the clear irreparable harm that required the entry of a stay also shows that exhaustion before filing suit was futile. In this case, irreparable harm and futility are really the same thing, because the absence of a remedy, resulting in irreparable, harm also makes exhaustion futile.

for the reason that we don't know why we didn't get a license. We are going to be punching at shadows. There's not – not even a semblance of due process.”.) In response to these arguments, the Circuit Court concluded it wanted to wait and see whether the Commission, which was meeting later than day, would stay the issuance of licenses on its own. (*See id.* at 116:8–11.)

At the Commission's meeting, the Commissioners, in turn, voted that they wanted to “let the courts handle this at this point.” (*See* the transcript of the Commission's December 28, 2023 meeting, attached as **Exhibit B**, at 26:5–9.) One Commissioner “ma[d]e a motion that we should not stay the awards and that we should move forward with the process and *leave this up to the courts.*” (*Id.* at 27:3–6 (emphasis added); *id.* at 30:12–14 (“The motion simply is the Commission is not going to impose a – a stay itself. That is what the motion is.”).) During deliberations on that motion, one Commissioner asked, “[W]ill this [motion] just let the judge in the – presiding in the case know immediately where we stand just in case he decides to make stays?” (*Id.* at 30:19–22.) The Chairman responded, “Exactly, Dr. Jensen. That is what this motion does. It, in effect, makes a declaration that the

Commission is not going to impose a stay. If a stay is imposed, it will be on the part of the Court.” (*Id.* at 30:23–31:2.) The motion passed. (*Id.* at 32:20–33: 21.)

It was only *after* the parties extensively argued the lack of an adequate administrative remedy and *after* the Commission declared that it would “leave this up to the courts,” that the Circuit Court entered its TRO. (*See* Doc. 642, attached as **Exhibit C**.) The Circuit Court concluded that the administrative remedy (the investigative hearing) was “likely insufficient to provide these Plaintiffs a meaningful avenue for review of the Commission’s adverse licensing decision” because the Commission had purportedly awarded its statutory maximum number of licenses. (*Id.* at 3.) The plaintiffs, the Court reasoned, had established “the threat of immediate and irreparable harm.” (*Id.*) Thus, under the Court’s reasoning, exhaustion of administrative remedies was not required because there is a threat of irreparable injury. *See Budget Inn of Daphne, Inc.*, 789 So. 2d at 157.

Even absent the lack of an adequate administrative remedy and the resulting irreparable harm, exhaustion is not required in this case. Alabama Code § 41-22-10 makes clear that exhaustion is not required in

a case, like this one, that challenges the legality of an administrative rule. *See* Ala. Code § 41-22-10 (“The validity or applicability of a rule may be determined in an action for a declaratory judgment or its enforcement stayed by injunctive relief in the circuit court of Montgomery County, unless otherwise specifically provided by statute, if the court finds that the rule, or its threatened application, interferes with or impairs, or threatens to interfere with or impair, the legal rights or privileges of the plaintiff.”); *see also 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).”).

III. The Open Meetings Act confers no “discovery privilege.”

The Commission conclusorily refers to its alleged right to rely on procedural requirements in the Open Meetings Act as a “privilege,” but it misapprehends the nature of a privilege justifying mandamus review.

As explained in *Ex parte Miltope*, 823 So. 2d 640 (Ala. 2001), mandamus review in cases involving privileges is necessary because disclosure of privileged information may result in irreparable harm if the privileged information is disseminated. *Miltope*, for example, concerned

the threatened disclosure of trade secrets for which there could be no remedy: “The proverbial bell cannot be unrung and an appeal after final judgment on the merits will not rectify the damage.” 823 So. 2d at 645 (internal citations omitted).

But no privilege is being disregarded in this case because no Commission witness has yet been called to testify. The Circuit Court has already exercised its discretion to place limitations on the scope of discovery in advance of the preliminary injunction hearing. The Circuit Court’s discovery order places limitations on the number of depositions, the length of depositions, and the number of written discovery requests. (See the Circuit Court’s Discovery Order, attached as **Exhibit D**.) It has also established a procedure for permitting the Commission to preserve its alleged “deliberative process privilege,” a privilege that does not appear to have been recognized in Alabama and which appears to directly contradict the OMA’s declaration that “[i]t is the policy of this state that the deliberative process of governmental bodies shall be open to the public during meetings as defined in Section 36-25A-2(6).” Ala. Code § 36-25A-1(a). The Circuit Court has expressly allowed the Commission to attempt to assert whatever privilege(s) it may wish to assert, as all other

privileges are asserted, by instructing witnesses not to answer questions for which privileged information is being elicited. The Circuit Court can then take up such privilege questions as they are taken up in the ordinary course—following the deposition and on briefs and argument. Only once a record is fully developed, as would be the case in this scenario, is there a potentially ripe privilege question for mandamus review.

Finally, the Commission’s arguments directed to the propriety of discovery regarding the OMA are unfounded for at least two reasons.

First, the claims in this case are not confined to OMA claims, so any discovery boundaries allegedly established by that Act do not apply to other claims. Indeed, the Circuit Court acknowledged as much when setting out its reasons for granting discovery at a recent hearing: “I think with the allegations that have been made and what we anticipate could happen at the hearing at the end of next month, I think discovery would be helpful, not just for the record, but for this Court to make its determination on the preliminary injunction issues based on what’s been pled.” (*See* January 24, 2024 transcript, attached as **Exhibit E**, at 8:22–9:6.)

Second, the Commission does not even contend that the OMA establishes a privilege that protects information from disclosure. Rather, it argues merely that it has the right not to engage in any discovery except under the procedure established by the OMA. But the OMA makes clear that its procedure is not exclusive; in fact, it expressly recognizes that, in addition to the procedures and remedies specified in the OMA, the Circuit Court has the authority to grant injunctive relief pursuant to the Alabama Rules of Civil Procedure: “Prior to a final determination of the merits, temporary restraining orders or preliminary injunctions may be issued upon proper motion and proof as provided and required in the Alabama Rules of Civil Procedure.” Ala. Code § 36-25A-9. The Circuit Court has set a hearing for the plaintiffs’ motions for preliminary injunction. It is customary for parties to engage in discovery, consistent with the Alabama Rules of Civil Procedure, in preparation for preliminary injunction hearings. (*See Ex. D.*)

IV. No “deliberative process” privilege applies.

The Commission also argues that allowing discovery would violate a “deliberative-process privilege.” But this, too, is no basis for mandamus relief and does not call for this Court to delve into whether and to what

extent Alabama law contains any “deliberative-process privilege” that might apply in this case.

First, as the Circuit Court recognized, any claim of privilege would have to be assessed on a question-by-question basis. (*See Ex. D.*) At any deposition, counsel for the Commission could invoke a claimed privilege in response to specific questions and instruct the deponent not to answer; then the matter could be presented to the Circuit Court for resolution in a specific context. The Commission offers no authority to support the idea that Commissioners are simply immune from having their depositions taken, or that there are no questions that would be properly asked. Again, there is no danger of the breach of any privilege because the Circuit Court has made clear that the Commission may avail itself of the procedures for preserving privileges set forth in the Alabama Rules of Civil Procedure.

Second, the Commission is wrong in arguing that federal law requires Alabama’s state courts to apply a “deliberative-process privilege.” That is, the Commission relies on only subsection (a) of Alabama Rule of Evidence 508, which—by its title—covers “Secrets of state and other official information: Governmental privileges.” Rule

508(a) says, “If the *United States* creates a governmental privilege that the courts of this State must recognize under the Constitution of the United States, the privilege may be claimed as provided by the law of the United States.”

Even if (as the Commission seems to say) the federal courts apply a “deliberative-process privilege” in some cases that are litigated in federal court, that does not mean that *state courts* must recognize that privilege in state-court litigation involving state officials. In fact, federal law recognizes that *state law* governs issues of privilege in civil cases arising under state law—even when those cases are litigated in federal court. *See* Fed. R. Evid. 501 (acknowledging that “in a civil case, state law governs privilege regarding a claim or defense for which state law supplies the rule of decision.”). It is therefore all the more clear that state law governs issues of privilege in *state-court* cases arising under state law and not involving the federal government at all. States are free to reject any governmental privilege, in state-court litigation involving state government. Federal law says nothing about that. In addition, the Commission ignores Alabama Rule of Evidence 508(b), which says, “No other governmental privilege is recognized except as created by the

Constitution or statutes of this State or rules promulgated by the Supreme Court of Alabama.” The Commission does not even argue that the Constitution or statutes of Alabama have created any “deliberative-process privilege” at all. In short, the Commission has given this Court *no* reason to take any position on the privilege issue at this time.

Moreover, as noted above, it is the policy of the State of Alabama that the deliberative process be conducted in open meetings. Given that important public policy, and further given that the Circuit Court has established a procedure for the Commission to assert the alleged deliberative process privilege, their claim of such a privilege is no reason to interrupt discovery and further delay this litigation.

* * *

Issues involving the Commission’s licensing process have been in litigation for months, and because of failures in that process, the Commission has had to rescind two rounds of license awards. Now the issuance of licenses coming out of the Commission’s third round of awards has been stayed to litigate numerous legal issues stemming from the Commission’s actions. Throughout this months’ long litigation, the Commission has attempted to rush the process forward, without

addressing all the legal infirmities with the process that have now caused a halt to the process. After months of consideration, the Circuit Court has decided to allow discovery so that the parties and the court can once and for all adjudicate the issues. But now the Commission wants to stop the process and prevent any discovery. There is no valid reason to do so. For the foregoing reasons, the Commission's petition for writ of mandamus should be dismissed.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this motion complies with all font and word limitations set forth in the Alabama Rules of Appellate Procedure. According to the word-processing system used to prepare this document, the motion contains 2,855 words and has been prepared using Century Schoolbook font, size 14.

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CERTIFICATE OF SERVICE

I hereby certify that this has been served electronically via electronic mail on the following on February 5, 2024:

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IN THE CIRCUIT COURT OF MONTGOMERY COUNTY
MONTGOMERY, ALABAMA
FIFTEENTH JUDICIAL CIRCUIT

ALABAMA ALWAYS, LLC, et al.,
Plaintiff,

V. Case Number: 03-CV-2023-231

MASTER CASE FILE

STATE OF ALABAMA MEDICAL
CANNABIS COMMISSION,
Defendant.

*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

* * * * *

PROCEEDINGS, held before James H.
Anderson, Circuit Judge, on December 28, 2023.

* * * * *

Mary R. King, RMR, CCR-387
Official Court Reporter

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ALSO PRESENT: Justin Aday, Esq.

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THE COURT: Patrick.

Jemmstone. Mr. Green.

And is this a duplicate for Alabama Always
or are y'all just wanting to be in twice, or is
that --

MR. SOMERVILLE: We filed it in both
cases, so --

THE COURT: And then -- is it
Trulieve?

MR. BLOOM: It's Trulieve, Your Honor.

THE COURT: Trulieve. I'm sorry. And
that's intervention and -- anyway, we've got
Insa Alabama.

MR. RAGSDALE: That's us, Your Honor.

THE COURT: All right. And 3 Notch
Roots.

MR. ESSIG: Right here, Your Honor.

THE COURT: Okay. And Theratrue.
This is -- I'm into the amend, alter, vacate.

Let's see. Have I got anybody else?

Let's see. Specialty Medical Products.

MR. MILLS: That's us, Judge. We've
moved to intervene on the other side.

THE COURT: Thank you, Mr. Mills.

Is there anybody else?

1 MR. MAIN: Your Honor, Saxon Main on
2 behalf of Verano Alabama. We have not filed
3 anything yet. We're trying to figure out
4 exactly which route we're going to go, but we
5 should be -- as much as we've resisted joining
6 the party, we should be joining the party.

7 THE COURT: Let me ask you this,
8 Mr. Main. What's happened to y'all's case
9 about the --

10 MR. MAIN: They haven't reversed it
11 yet.

12 THE COURT: Well, they've still got
13 some time before the year is up.

14 Is it pending?

15 MR. MAIN: Our brief is due on the
16 28th, Your Honor. There was a procedural
17 question that they had, but we have a letter
18 brief due by the 3rd with the Court of Civil
19 Appeals, and then our -- presumably, our
20 briefing schedule will resume.

21 THE COURT: And, see, I think the
22 legal questions that Verano is asking could
23 clear a lot of -- a lot of the issues that I
24 see, the general question of, if there's an
25 issuance, can the commission claw it back,

1 which I found they could. And you're saying
2 I'm wrong.

3 MR. DUNGAN: You mean an award.

4 MR. WEBSTER: An award.

5 THE COURT: An award, not the
6 issuance, because we've got -- it's not like
7 being pregnant -- it's either so there's an
8 award and there's an issuance. So we've got
9 that still pending. And there's lot of y'all
10 that are claiming that issue. I think it's a
11 live issue with Verano's thing.

12 All right. Any other interventions
13 that --

14 MR. DUNGAN: Judge, I believe Pure by
15 Sirmon Farms should be on your list of motions
16 to consolidate. I didn't hear that one.

17 THE COURT: Let's see.

18 MR. DUNGAN: It's cultivators.

19 THE COURT: Yes, I see the -- I see
20 your injunction. I've got Sirmon Farms. I've
21 got several TROs and injunctions. And you're
22 wanting to intervene.

23 MR. DUNGAN: Consolidate.

24 THE COURT: Consolidate. We've got a
25 couple of intervenors and consolidations with

1 what we're calling the master case or up and
2 down 231.

3 Is there anybody else?

4 All right. Let me just ask is there any
5 opposition to allowing the interventions and
6 consolidations?

7 (No response)

8 THE COURT: Okay. I will grant those.
9 And if you filed one and you're not in the
10 party or you haven't done it -- now, Mr. Main,
11 I don't know what your --

12 MR. MAIN: We'll get you something
13 soon, Your Honor.

14 THE COURT: You plan on doing it or --

15 MR. MAIN: Waiting on final
16 instructions from the client.

17 THE COURT: Okay. Okay.

18 All right. Now, then, we have -- so
19 that's what we've got.

20 Then I've got several requests for a
21 temporary restraining order. And before we go
22 through who all is here, just from a time line,
23 Mr. Webster, Mr. Jackson, where are we on --
24 all the licenses have been awarded?

25 MR. JACKSON: Awarded.

1 THE COURT: But there have not been
2 any issued?

3 MR. JACKSON: Correct.

4 THE COURT: Is there a timetable that
5 the commission is looking at about when the
6 license -- they expect the issuance of the
7 licenses that are going to be --

8 MR. JACKSON: Yes, sir, there is.

9 THE COURT: All right. What is it?

10 MR. JACKSON: So, leave aside the
11 integrated facilities, everybody else is
12 tomorrow.

13 THE COURT: Okay.

14 MR. JACKSON: Integrated facilities,
15 January 9th.

16 THE COURT: Okay. So all the licenses
17 except for the -- there's going to be five for
18 the integrated facilities are scheduled for
19 January 9th, right?

20 MR. JACKSON: For integrated, yes,
21 sir.

22 THE COURT: Okay. Now, so, having
23 said that, I think I've got a TRO on things
24 that aren't integrated facilities. We've got
25 cultivators --

1 MR. DUNGAN: Yes, sir. And
2 dispensaries.

3 THE COURT: So that would be Sirmon
4 Farms.

5 MR. DUNGAN: And Yellowhammer Medical
6 Dispensary.

7 THE COURT: All right. Yellowhammer
8 Dispensary and Sirmon is a cultivator?

9 MR. DUNGAN: Yes, sir.

10 THE COURT: Is there anybody else
11 that's a nonintegrated license?

12 MR. DUNGAN: Anybody?

13 THE COURT: Yes, sir.

14 MR. SCHILLECI: I'm here on CCS of
15 Alabama, LLC, dispensary awarding.

16 THE COURT: Have you filed something,
17 Mr. Schilleci?

18 MR. SCHILLECI: We intervened in the
19 original Alabama Always case, which we
20 believe --

21 THE COURT: And y'all are a
22 dispensary?

23 MR. SCHILLECI: A dispensary, yes,
24 Your Honor.

25 THE COURT: And you didn't get an

1 award?

2 MR. SCHILLECI: We did receive an
3 award. We intervened on behalf of the AMCC.

4 THE COURT: Okay. So you're on behalf
5 -- you're not wanting me to restrain them, are
6 you?

7 MR. SCHILLECI: Not at all, Your
8 Honor.

9 THE COURT: And so -- but Yellowhammer
10 and Sirmon --

11 MR. DUNGAN: And, Judge, I can
12 clarify. For the dispensary licenses, we would
13 be okay if that stay was limited to only those
14 companies who were awarded the third time but
15 were not previously awarded. In other words,
16 we would be okay with -- for the commission to
17 go forward with issuance on the dispensary
18 licenses for three-time awardees, which I
19 believe there are two.

20 MR. SCHILLECI: Correct.

21 THE COURT: Well, how many are there?

22 MR. DUNGAN: Four.

23 THE COURT: So two you don't have any
24 objection to?

25 MR. DUNGAN: That's correct.

1 THE COURT: Who are those two for the
2 record?

3 MR. DUNGAN: CCS of Alabama and RJK
4 Holdings, I believe.

5 THE COURT: And so in the -- okay.
6 Well, but you want me to hold up on this third
7 -- this third time is a charm deal?

8 MR. DUNGAN: I would kind of like to
9 hear from the commission, because I believe in
10 prior conversations with the commission's
11 counsel, they had contemplated staying some --
12 staying the issuance of some licenses pending
13 the investigative hearing process. But we
14 haven't really heard anything from them about
15 that today or leading up to today.

16 We know they have a meeting this
17 afternoon. You know, the agenda is pretty
18 vague. It just says consideration of items
19 related to investigative hearings; but their
20 time line says, you know, consideration of
21 imposing stay on issuance of some or all
22 awarded licenses. So it contemplated that, but
23 we don't know what they're going to do this
24 afternoon.

25 THE COURT: Well, maybe they don't

1 know either.

2 MR. JACKSON: That would be accurate,
3 Your Honor.

4 THE COURT: Just saying it's being
5 considered.

6 MR. DUNGAN: I just know that as it
7 has been represented to this Court in the past,
8 you know, usually, when the commission's
9 counsel makes a recommendation to the
10 commission, the commission goes along with it.

11 So I'm curious as to what the counsel's
12 recommendation will be to the commission today
13 regarding the -- a stay on the issuance of some
14 or all licenses pending the investigative
15 hearing process, since that is clearly
16 something that's been contemplated.

17 THE COURT: They may or may not know.

18 Mr. Jackson, can you --

19 MR. JACKSON: Judge, without violating
20 the attorney/client relationship, I think I can
21 accurately state that the commission -- the
22 commission's lawyers have not made a
23 recommendation. It's a commission decision.
24 Without -- how do I couch this without
25 violating attorney/client relationship?

1 We have -- we've given advice to the
2 commission on various scenarios of issuing a
3 stay, not issuing a stay.

4 THE COURT: Yes. And that meeting --

5 MR. JACKSON: It's their decision. We
6 don't know what they're going to do.

7 THE COURT: And that meeting is this
8 afternoon?

9 MR. JACKSON: That's correct, one
10 o'clock.

11 THE COURT: And so is it anticipated
12 that at this afternoon's meeting it's a
13 possibility that the licenses for the
14 nonintegrated could be issued?

15 MR. JACKSON: No, they won't be issued
16 in today's meeting. They will be issued by the
17 commission tomorrow.

18 THE COURT: At tomorrow --

19 MR. JACKSON: That time line is
20 already in effect from the awards that were
21 done fourteen days ago. They will issue
22 tomorrow without commission action. It doesn't
23 take any additional commission action to go
24 ahead and --

25 THE COURT: So the commission could

1 stay or --

2 MR. JACKSON: They could, yes.

3 MR. DUNGAN: And, that's right, Judge,
4 as they're referencing, the actual issuance of
5 a license is purely ministerial. It doesn't
6 require any additional action from the
7 commission because the discretionary function
8 has already been exhausted.

9 THE COURT: It's a time function from
10 the time it was awarded before issuance?

11 MR. JACKSON: That's right.

12 THE COURT: And so it's up to the
13 commission. And I think the commission could
14 stay it or not.

15 All right. So we've got two licenses,
16 potentially, that weren't awarded that are
17 challenging on that issue, right?

18 MR. DUNGAN: And, Your Honor, I
19 believe there's actually six dispensary
20 applicants who have requested investigative
21 hearing. I can only speak for one of them,
22 but --

23 THE COURT: Well, that's something
24 that the commission -- that y'all are entitled
25 to do is ask for an investigative hearing.

1 MR. JACKSON: Right.

2 MR. DUNGAN: But if there are no
3 remaining licenses, then what's the purpose of
4 the investigative hearing? I think that's the
5 point.

6 THE COURT: Well, I think they might
7 find that somebody's might have been issued in
8 error or something. I mean, the commission can
9 do whatever they want to with it.

10 MR. DUNGAN: But then they wouldn't be
11 able to -- once the license is issued, right,
12 then they wouldn't be able to then revoke
13 without having some grounds for doing that.

14 MR. JACKSON: But an investigative
15 hearing may reveal what those grounds are. We
16 don't know. We don't have that clairvoyance.

17 THE COURT: Right.

18 Okay. So for these two that weren't
19 awarded -- let's see -- Yellowhammer Dispensary
20 and your other client --

21 MR. DUNGAN: Pure by Sirmon Farms is a
22 cultivator.

23 THE COURT: Okay. Tell me about the
24 cultivator licenses.

25 MR. DUNGAN: Other motion on -- for

1 cultivator license was purely based on our
2 complaint/petition for review for the two prior
3 revocation actions of the commission of that
4 license previously awarded to Pure, which was
5 the highest overall score, tied with CCS of
6 Alabama and definitely the highest in the
7 cultivator category, who were essentially
8 penalized by the commissioners for opting not
9 to participate in the optional presentations
10 that were made part of the emergency rule.

11 And, you know, it was reiterated over and
12 over by the commission these presentations were
13 optional during the meetings, in court, in the
14 rules itself that claims it's optional. But it
15 was on the very morning of the day when the
16 cultivators were supposed to present that the
17 commission's lawyers presented this settlement
18 agreement to the commission to discard with the
19 scoring.

20 This is something that Pure by Sirmon
21 Farms didn't know about. And your order on
22 that didn't even come down until two days after
23 the cultivator presentations were going on.

24 THE COURT: We had the public hearing
25 on that. Everybody knew that's what was coming

1 down.

2 MR. DUNGAN: I'm sorry?

3 THE COURT: I mean, everybody knew
4 that day when we had the hearing.

5 MR. DUNGAN: Well, there wasn't a
6 hearing. There was a mediation. And Pure by
7 Sirmon Farms --

8 THE COURT: And I put something on the
9 record from the mediation -- after the
10 mediation.

11 MR. DUNGAN: Sure.

12 THE COURT: I read the order into the
13 record. And it was in writing.

14 MR. DUNGAN: What I'm suggesting,
15 though, is Pure by Sirmon Farms was never a
16 party to this lawsuit. They were not -- they
17 were preparing for their presentation.

18 THE COURT: I'm just saying it was --
19 we didn't get the final order, but I read the
20 agreement on the order in open court, open to
21 the public, and it was reported. That was
22 something that was known.

23 MR. DUNGAN: The point was that even
24 for the cultivators, since they had to go
25 present on day one, the time for them to make a

1 decision as to whether or not to present this
2 optional presentation had already lapsed by the
3 time this settlement agreement was ratified by
4 the commission and out there.

5 So that -- had my client known that the
6 scores were going to be completely thrown out
7 and these presentations were going to be,
8 essentially, the only criteria used by the
9 commission to award or deny licenses, they
10 certainly would have come talk to them for
11 twenty minutes.

12 But instead of being the highest-scored
13 and highest-ranked applicants, they were simply
14 left off, and, essentially, penalized by the
15 commission for not doing what the commission
16 repeatedly said was optional.

17 THE COURT: How many cultivator
18 licenses are there?

19 MR. DUNGAN: There are twelve to go
20 around. There are eleven applicants. I
21 concede that there are always going to be, at
22 least in this license offering, enough
23 cultivator licenses to go around.

24 THE COURT: So I'm lost. So --

25 MR. DUNGAN: My point is that we filed

1 our motion on the grounds that the Alabama
2 Administrative Procedures Act does provide a
3 stay of the enforcement of their revocation.

4 THE COURT: You lost me. You lost me.
5 Y'all were one of eleven?

6 MR. DUNGAN: Eligible applicants, I
7 believe.

8 THE COURT: For twelve spots?

9 MR. DUNGAN: That's right.

10 THE COURT: And you didn't get an
11 award?

12 MR. DUNGAN: That's correct.

13 THE COURT: Is there any
14 administrative appeal or remedy?

15 MR. DUNGAN: We are pursuing that,
16 yes, through the investigative hearing process.

17 THE COURT: Is that yes, Mr. --

18 MR. JACKSON: Yes, sir, they've
19 requested an investigative hearing.

20 MR. DUNGAN: That's right.

21 THE COURT: And so it's not like
22 they're shut out and they're gone from being
23 awarded to you just didn't get an award?

24 MR. DUNGAN: That's right.

25 MR. JACKSON: Judge, in terms of being

1 penalized, there are two -- two similarly
2 situated applicants that also did not make
3 presentations that were awarded based on their
4 applications, so --

5 MR. DUNGAN: Which ones were those?

6 MR. JACKSON: Which ones are those?

7 MR. ADAY: I Am Farms.

8 MR. DUNGAN: I Am Farms had to be
9 awarded a license so that they can meet the
10 minimum minority license category.

11 THE COURT: It could have been
12 somebody else.

13 MR. DUNGAN: There weren't any others
14 to chose from.

15 THE COURT: They got it. Okay. They
16 got it.

17 MR. JACKSON: And who was the other
18 one?

19 MR. ADAY: For secure transporter,
20 International Communication.

21 MR. DUNGAN: That's a different
22 category. We're talking cultivators.

23 THE COURT: But they didn't --

24 MR. DUNGAN: There's another
25 cultivator, Blackberry Farms, the same thing,

1 had been a two-time awardee, scores towards the
2 top of the list, makes a business decision not
3 to participate in these optional presentations.

4 The commission's lawyers and chair and --
5 remind the commission at the beginning of every
6 single one of these presentation meetings that
7 they are optional. They are not required. And
8 everybody that doesn't present is still subject
9 to award of a license.

10 Blackberry Farms, same thing, both of
11 them --

12 THE COURT: Let me ask you this.
13 Rather than holding up the award and the
14 issuance of licenses with these other folks,
15 there's still going to be available, if you go
16 through the process --

17 MR. DUNGAN: We concede that, Your
18 Honor. We filed our motion for cultivator
19 license based on the provisions of the
20 procedures act that say that you get a stay as
21 a matter of a right when the effect of an
22 agency's action is to revoke a license from
23 someone improperly. And our position --

24 THE COURT: And my finding was they
25 haven't revoked the license.

1 MR. DUNGAN: Judge, I don't believe
2 you've made a finding on that.

3 THE COURT: Well, on -- my Verano
4 ruling is kind of --

5 MR. DUNGAN: I understand we might be
6 jumping ahead, but I do think it's important to
7 point out that Verano was never consolidated
8 into this case. Verano was strictly related to
9 the June 12th awards that were rescinded, i.e.,
10 revoked on August 10th.

11 And, you know, there's factual differences
12 between the first revocation and the second
13 revocation. So, you know, that may be the law
14 of this bench, but it's not the law of this
15 case. And it's on appeal.

16 And there are six or seven parties that
17 have filed petitions for review on that issue
18 as to whether or not the October 26th
19 revocation action by the commission was
20 appropriate. So there are some differences
21 there. And we really need to get those issues
22 worked through this trial stage and so that we
23 can get them consolidated with the Verano
24 appeal sooner rather than later.

25 THE COURT: And I think that basic

1 question in Verano will probably control what I
2 do.

3 MR. DUNGAN: Sure. And I think there
4 is a narrow opportunity, though, because there
5 was some case law cited by the commission in
6 the Verano matter regarding the tabulation
7 errors and the mistake.

8 But, you know, they don't have the same
9 excuse to rely on for what they did on October
10 26th. So there is a scenario out there where
11 the Court of Civil Appeals could say, yes,
12 commission, you were right about the June 12
13 awards, but you're wrong about August 10.

14 That possibility is out there. And if we
15 just let Verano go up on its own, we may not
16 get that answer. So it's important to have all
17 of those claims decided preferably in one --

18 THE COURT: And there were different
19 issues in the October thing involving the Open
20 Meetings Act and -- now -- but getting to your
21 request for temporary restraining order --

22 MR. DUNGAN: For the cultivator.

23 THE COURT: -- for the cultivator, I'm
24 concerned if there's -- if you've got a point
25 where you exhaust it -- I don't think you've

1 exhausted the administrative remedies for that.

2 MR. DUNGAN: Right. Our request there
3 is based on the procedures act provisions
4 regarding unlawful revocations. So we are
5 protecting our record and for --

6 THE COURT: For that issue on the
7 October issuance?

8 MR. DUNGAN: That's right, the October
9 revocation, yes.

10 THE COURT: Well, unless I get
11 convinced otherwise, I'm going to deny your
12 TRO. We'll preserve that other issue that I
13 think that everybody else is joining is on as
14 far as that goes. Your case is not dismissed,
15 but the TRO is denied at this time.

16 MR. DUNGAN: Thank you, Your Honor.

17 THE COURT: Now, as far as the
18 dispensaries, we've got -- you're the only one
19 that's filed a TRO on the dispensary?

20 MR. DUNGAN: That's my understanding.

21 THE COURT: Okay. But there were two
22 that were left out?

23 MR. DUNGAN: Yes, there were two that
24 were left out.

25 THE COURT: And who is the other one?

1 MR. DUNGAN: Statewide Property
2 Holdings.

3 THE COURT: They haven't filed
4 anything? Does anybody know? Does anybody
5 know anything?

6 MR. DUNGAN: My understanding is that
7 they are seeking counsel, but all the counsel
8 in Alabama is in this room.

9 FROM THE AUDIENCE: They are seeking
10 counsel. I can confirm that.

11 THE COURT: Well, I mean, those
12 licenses, unless the commission stays it, are
13 going to be issued --

14 MR. DUNGAN: Tomorrow.

15 THE COURT: -- Friday. Friday.

16 MR. JACKSON: That's right.

17 THE COURT: Okay. And those are -- so
18 we've got -- so your request for the dispensary
19 is for me to put a hold on the issuance of two
20 of the licenses?

21 MR. DUNGAN: Yes, sir.

22 THE COURT: No objection to the other
23 two?

24 MR. DUNGAN: Yes, sir.

25 THE COURT: And, of course, you agree

1 with that, Mr. Schilleci?

2 MR. SCHILLECI: Yes, Your Honor.

3 THE COURT: Okay. What's the
4 commission's position on that?

5 MR. JACKSON: We won't agree with two
6 and two, split it up, no.

7 THE COURT: I'm trying to figure out
8 -- so if I stay -- why should I stay the
9 issuance on this one?

10 MR. DUNGAN: Judge, there are
11 obviously six dispensaries that have requested
12 an investigative hearing. I only care about
13 one of them, Yellowhammer, high scorer,
14 two-time award winner.

15 The second time the commission met to
16 award licenses when they just wrote down their
17 top four instead of ranking them one to a
18 million, Yellowhammer was the only unanimous
19 applicant of the dispensary applicants.

20 You get to this third round with the
21 emergency rule, which I'm sure you understand
22 we'll hear at some point this morning from
23 others, there are problems with the emergency
24 rule. There are problems with this ranking
25 system that the commission used in the third

1 round.

2 Yellowhammer actually had seven of the
3 eleven commissioners who were present rank them
4 in their top four. Not only is that enough
5 votes to get a license, it's more votes than
6 another company, Capitol Medical, actually
7 received. Capital Medical only passed six to
8 five.

9 Yellowhammer had seven commissioners rank
10 them in the top four, never got a vote because
11 this ranking system that was used by the
12 commission enabled some commissioners, as we
13 all know now, to manipulate the system and tank
14 certain applicants that they perceived to be a
15 threat to their applicant of choice.

16 THE COURT: How is that something
17 that's unlawful? If it's politics involved --

18 MR. DUNGAN: That's got to be played
19 out. There never was supposed to be politics
20 involved in this process. That was the intent
21 of the Alabama Legislature.

22 THE COURT: So the intent of the
23 Alabama Legislature is not to have politics
24 involved?

25 MR. RAGSDALE: They didn't know what

1 they were doing.

2 MR. DUNGAN: Apparently not. It
3 certainly says that in the act -- well, not
4 verbatim.

5 THE COURT: Well -- so -- but because,
6 I mean, there's a system in place that if
7 somebody for whatever reason had some concern
8 that another commissioner didn't have, is there
9 anything wrong with that commissioner using his
10 or her discretion and expressing their desire
11 to have somebody rank ahead of somebody else?

12 MR. DUNGAN: The problem is that it's
13 in violation of the commission's own rules.
14 The rules require that a component of the
15 review be under blind condition. The rules
16 require an impartial numerical ranking process
17 be used. None of that was done.

18 THE COURT: How do you have it blind
19 if you're naming somebody?

20 MR. DUNGAN: That's for the commission
21 to figure out. Once they agree to throw the
22 component of their program out that met that
23 criteria in the rules, which was the USA
24 scoring, once they agreed to throw all of that
25 out, they had to figure out another way to

1 comply with their own rule about that. They
2 just didn't.

3 THE COURT: How did they do it?

4 MR. DUNGAN: They used this procedure
5 in the emergency rule that initially was
6 intended by the commission to simply be a
7 nomination order aggregator, but, then fast
8 forward a month later when you throw the scores
9 out, this nomination order becomes the only
10 scores we have. That's all we have. And they
11 violate the rules because they weren't done
12 under blind conditions, and they weren't
13 impartial.

14 THE COURT: Well, what actually
15 happened? They had nominations and then votes?

16 MR. DUNGAN: They filled out a sheet,
17 a tally sheet, for --

18 MR. BROM: Can I show you this, Judge?

19 THE COURT: Sure.

20 MR. BROM: This is the commissioners'
21 ranks. That's the only copy I brought, Judge.
22 I may have to take that back from you.

23 THE COURT: Okay.

24 MR. DUNGAN: Wide discrepancies across
25 the board. It's arbitrary.

1 THE COURT: Well, I think some people
2 like chocolate and some people like vanilla.

3 MR. DUNGAN: But that's not what the
4 act and the rules prescribe. There are certain
5 criteria that the commission is supposed to use
6 to evaluate applications.

7 THE COURT: So this gets to what we've
8 got for the next step in Mr. Green's complaint
9 about the flaw in the procedure. So that's --
10 you're claiming --

11 MR. DUNGAN: We -- go ahead. I'm
12 sorry.

13 THE COURT: I mean, but, what you're
14 asking is that I order them not to issue these
15 licenses until this gets cleared up?

16 MR. DUNGAN: That's right, because if
17 they're -- if we're right about any of this,
18 and then you start trying to claw back licenses
19 that have already been issued; and you've got
20 companies that have already, you know, started
21 retrofitting their dispensary buildings, and,
22 you know, hiring people, I mean, that's going
23 to cause a much more -- I mean, the status quo
24 needs to be maintained until these things are
25 resolved.

1 THE COURT: Okay. Now, so, the
2 premise of this is, like I said, the same issue
3 that everybody jumped in on?

4 MR. GREEN: That's right.

5 THE COURT: Well, okay, let me --
6 Mr. Green, tell me why you don't have an
7 administrative remedy to what you're
8 complaining about.

9 MR. GREEN: Well, we don't have an
10 administrative remedy because if they go
11 forward issuing five integrated licenses, there
12 are no more integrated licenses to give out.
13 So we go through an investigative hearing and
14 we have nothing left. There's no way to unwind
15 things.

16 You're right. You're lighting on the
17 fundamental problem that we've pointed out,
18 which is, their regulations from day one have
19 required that there be scoring of applications,
20 number one; that some of that scoring be in the
21 blind, number two; that the scoring use
22 impartial numerical criteria, number three;
23 that the scoring evaluate applications on the
24 statutory and regulatory criteria.

25 All of those four things, they are bound

1 up in regulations .10 and .11, particularly .10
2 paragraphs one and two.

3 I know Your Honor has an extensive history
4 with this and so you will recall that back in
5 the late summer and early fall, after the
6 initial enjoining of the August 10th licenses,
7 parties began discussions about what could be
8 done to resolve ten meg issues and all sorts of
9 other issues.

10 And so one of the things that was asserted
11 vigorously by several applicants' counsel was
12 you've got to throw out the South Alabama
13 scores -- not my client, by the way, never --
14 but several applicants threw that out and
15 hammered that issue that the South Alabama
16 scores had to be thrown out.

17 The South Alabama scores, as Mr. Dungan
18 just pointed out correctly, was the way in
19 which -- for all of the faults that might
20 otherwise exist, it was the way in which the
21 commission complied with all of those criteria
22 and all of those regulations in their own
23 regulations, in their own rules that there be
24 some scoring in the blind; that the scoring be
25 of the applications; that the scoring be using

1 the statutory and regulatory criteria; that the
2 scoring be using an impartial numerical
3 process, all of those things, that's -- you
4 have a scoring system, an artifice in place to
5 do that.

6 In the aftermath of -- in conjunction with
7 all those discussions, while those discussions
8 were going on and while some applicants were
9 hammering that issue, I can tell you as an
10 officer of this court -- and others can tell
11 you -- we had discussions with commission
12 counsel about the fact that we understood that
13 the commission had an interest in preserving
14 the South Alabama scores because they needed
15 them in order to comply with their preexisting
16 regulations just like we're talking about.

17 At the conclusion of those discussions,
18 the commission then promulgated the emergency
19 rule.

20 The emergency rule contemplated that the
21 South Alabama scores were going to continue to
22 be used but that the commission was going to
23 provide applicant with general scoring
24 information about the way in which the scores
25 were developed and all of that and then provide

1 each applicants with its own particular scoring
2 results so that in these interview processes,
3 these presentations, applicants could talk
4 about their scores in an intelligent way; and,
5 of course, would, also, as part of that
6 emergency rule, handle the processing of ten
7 meg data so that could also be explained in the
8 presentations.

9 So fast forward to right on the heels of
10 the presentations and the mediation that
11 resulted from the filing of some motions by
12 Alabama Always, the commission then does an
13 about-face and agrees voluntarily to jettison,
14 to abandon entirely the South Alabama scores.

15 Candidly, that came as a shock to me. And
16 my client never had a claim being litigated
17 about scoring from the beginning, but all the
18 more reason it came as a shock to me.

19 And the reason it came to a shock to me
20 and a lot of other people is we knew that the
21 commission, by jettisoning the Alabama scores
22 -- the South Alabama scores was going to have
23 to come up with a way of complying with
24 regulations .10 and .11 that still require
25 blind scoring, scoring, scoring based on

1 statutory regulatory criteria, all that stuff.

2 The emergency rule didn't speak to that.

3 In fact, the emergency rule assumed that the
4 South Alabama scores were going to stay in
5 place.

6 So when they throw the scores out
7 voluntarily --

8 THE COURT: Let me stop you here. I
9 remember -- and Mr. Somerville is about to jump
10 up.

11 MR. SOMERVILLE: I would like to
12 respond to some of what Wilson -- Mr. Green
13 just said at the appropriate time.

14 THE COURT: I will at the time. But
15 I'm just -- so the South Alabama scores, I
16 remember there were -- we had a hearing. And
17 there was -- it appeared to the Court there
18 were huge inconsistencies that were pointed out
19 by the scoring of South Alabama or whatever
20 happened.

21 MR. GREEN: That's right.

22 THE COURT: I don't know if --
23 whatever it was, there was some reason, if I
24 remember, like, you had the exact same security
25 plan that got scored up high --

1 MR. GREEN: A 90 and a 40.

2 THE COURT: -- the same plan scored
3 low. And I think that led the commission --
4 and it was pointed out about the problems --

5 MR. SOMERVILLE: Your Honor, it was
6 also that the South Alabama scoring system, the
7 scoring guide, did not effectuate the clear
8 statutory mandates, for example, the sixty-day
9 cultivation requirement.

10 THE COURT: And that was --

11 MR. SOMERVILLE: And so in our -- in
12 Alabama Always's story from day one --

13 THE COURT: Alabama Always always has
14 said.

15 MR. SOMERVILLE: Alabama Always has
16 always said that the commission needs to apply
17 the clear statutory criteria.

18 And our issue with the scores during those
19 discussions was that they did not effectuate
20 that.

21 THE COURT: I'm just trying to say
22 that there were -- and we had a mediated thing,
23 and the Court approved it. I found there were
24 some inconsistencies from what I saw. And I
25 could see where the commission would want to

1 take another --

2 MR. GREEN: I understand.

3 THE COURT: -- look other than South
4 Alabama scores.

5 What you're saying, so I understand your
6 argument, you're not saying you agreed with all
7 of the South Alabama scoring but there needed
8 to be a scoring.

9 MR. GREEN: That's right. The issue
10 is this. It's an issue of a process leading to
11 a reliable result. The process is you've got
12 to have scoring based on objective criteria --
13 on an impartial numerical process, et cetera,
14 et cetera.

15 That's in their rules. It's been in their
16 rules from day one. The emergency rules didn't
17 do anything to alter that. So when they throw
18 out the South Alabama scores as a matter of
19 process leading to a reliable subjective
20 result, they've got to come up with a scoring
21 system that satisfies all those requirements.

22 They can't just rely on what is set forth
23 in their emergency rule, which is not a scoring
24 process. It's a way -- it's a ranking system
25 that is used to determine order of voting.

1 That's not a score.

2 THE COURT: And the rankings were done
3 by the commissioners?

4 MR. GREEN: That's right.

5 THE COURT: And the rankings -- when
6 you have rankings like this, you always have
7 the Romanian judge that you see in the
8 Olympics.

9 MR. SOMERVILLE: Except that in this
10 case -- in the Olympics, they at least throw
11 out the outlier scores. They don't count the
12 Romanian judge on this side or the Canadian
13 judge on this side, okay? They take the
14 scores -- they throw out the outliers.

15 THE COURT: But that's not provided in
16 the regs.

17 MR. SOMERVILLE: That's not provided
18 for here. And also --

19 THE COURT: And I don't know if it --
20 you know, it might be a wise thing to do, but I
21 don't know if it's a necessary thing.

22 MR. GREEN: Well, what is necessary,
23 though, Your Honor, is for them to comply with
24 their rules. And that's what we're dealing
25 with here.

1 THE COURT: Okay. How did they not
2 comply with their rules, because they didn't
3 have a scoring system?

4 MR. GREEN: They did not use any
5 scoring system. Ultimately, they jettisoned
6 the scoring system that satisfied those
7 requirements, however impaired it was -- and it
8 was shown to the Court it was -- it was
9 nevertheless a scoring system that satisfied
10 the procedural requirements set forth in their
11 own regulations.

12 So it's incumbent on them to come up with
13 a scoring system if they're going to jettison
14 South Alabama, because nobody -- everybody in
15 the room knows that it wasn't reliable. But
16 it's up to them to come up with a scoring
17 system because the commissioners are supposed
18 to be using that along with everything else
19 they're evaluating in determining ranking, not
20 just, as I call it in my pleading, a spit ball
21 ranking system. That's not what's called for.

22 MR. SOMERVILLE: I'd like to add, Your
23 Honor, to his point, there is no indication in
24 anything they have done yet in any of these
25 votes, whether it's on June 12th, August 10th,

1 December 6th, December 12th, that they applied
2 these statutory criteria for whatever license
3 category they are issuing them.

4 And there's also no indication they've
5 told any applicant why they didn't get a
6 license or why they got a license. There is
7 nothing.

8 THE COURT: Do they have to do that?

9 MR. SOMERVILLE: I think they do under
10 the Administrative Procedure Act. They've got
11 to -- under Section 41-22-12, they have to
12 provide you with a notice stating the matters
13 asserted, what the statute is.

14 They want us to walk into this
15 investigative hearing process with no idea why
16 we weren't granted a license, somebody just
17 didn't like us. Did they -- did somebody have
18 the wrong tie on that day? We don't know.

19 And so the investigative hearing
20 process -- we've got to figure out what it is
21 we did wrong where we didn't get a license.
22 There's nothing that's told us why we didn't
23 get a license. There's no indication that
24 they've ever for any category applied the very
25 clear statutory mandates to any of this. And

1 that's the over-riding problem that I think
2 everybody is talking about is that there is no
3 notice of anything.

4 MR. GREEN: I do want to -- before I
5 yield the floor, I want to say this for the
6 record. I know Your Honor has been through the
7 ringer in this for the last six months. And I
8 absolutely understand as an officer of this
9 court that the last thing Your Honor wants to
10 do is to stop a process that has been the
11 subject of constant litigation and constant
12 struggle and struggle taking place right before
13 your eyes. And I fully respect that.

14 And I would submit to the Court that the
15 evaluation that has to take place here is to
16 what degree is it apparent that there is a
17 significant legal infirmity in what has
18 happened over the last -- on December 12th, to
19 what extent does Your Honor believe -- as we
20 fully believe -- that this is not a close call.

21 This is not what we were dealing with a
22 couple of months ago when Mr. Mills and
23 Mr. Somerville were arguing is it a rule, is it
24 not a rule; those kind of things that perhaps
25 are subject to some debate. They did not

1 comply with regulations .10 and .11.

2 There's no way they can stand up here and
3 argue they did. The ranking system is not a
4 score. It's not scoring that's in the blind.
5 It's not scoring based on impartial numerical
6 criteria. That's just not even a close call.

7 And the only argument, the only -- I'm
8 sure the commission will have something to say
9 about this -- but the only argument of record
10 right now is an argument made by Trulieve who's
11 come in here and said, oh, well, the emergency
12 rule just canned all of that, canned .10 and
13 .11, jettisoned it, completely set it on fire.
14 That's not right.

15 There's nothing in the emergency rule that
16 says that, number one. Number two, the
17 emergency rule in fact contemplated that the
18 South Alabama scores were going to continue to
19 be used, so that's just a nonstarter.

20 So my point is I know Your Honor is -- and
21 I respect it fully -- it's hard to want to stop
22 a process like this. And I don't make these
23 arguments lightly, but this one is not a close
24 call legally. I did want to say that for the
25 record.

1 THE COURT: Before I ask the
2 commission to respond, does anybody else want
3 to --

4 Mr. Ragsdale.

5 MR. RAGSDALE: Your Honor, we
6 obviously join in the vast majority -- not the
7 part where he sucked up to you -- but the rest
8 of it.

9 MR. FOX: Your Honor, part of my
10 client does join in that.

11 MR. RAGSDALE: Well, okay.

12 But, Your Honor, my client -- you may have
13 noticed, I moved on the other side of the room.

14 THE COURT: Right.

15 MR. RAGSDALE: Right? We went through
16 this process. Insa of Alabama complied with
17 every rule they gave us, every one. And in
18 August, we get voted number one. We're so
19 excited.

20 And then they decide in order to keep
21 Mr. Somerville from talking anymore -- and it
22 didn't work -- to jettison the only objective
23 standards that were in and required by their
24 rules.

25 You know, I think it's important.

1 Previously -- and I think Wilson makes this
2 point -- previously, there were arguments about
3 this is how they should do it. This is how it
4 ought to be done. This is how it's fair. In
5 this case, it's their own rules they violated.

6 It's their own rules that require the
7 objective criteria that Wilson has talked about
8 in terms of scoring. And they made the
9 decision, rightfully or wrongfully, to jettison
10 those. But that's not really our argument.
11 The argument is they had to replace it with
12 something that met their own rules.

13 This isn't is debate about whether the
14 South Alabama scores were accurate or complete
15 or inconsistent -- they may have been all of
16 those things -- but the point was the rules
17 adopted by their own organization require
18 objectivity, and with good reason, because
19 without those objective rules, it becomes a
20 political popularity contest. And that becomes
21 arbitrary and capricious by its very
22 definition.

23 And so we join in with the request for an
24 injunction and a request that they -- the
25 commission -- be required to comply with their

1 own rules in this instance, because Insa has
2 complied with those rules at every step, and it
3 cost us in the end.

4 THE COURT: Is there anybody else?

5 MR. ESSIG: Judge, the only thing I
6 want to add is, on behalf of 3 Notch Roots,
7 we've raised the First Amendment issue
8 regarding your order and regarding the
9 settlement agreement. And I know that issue
10 was raised at the hearing.

11 And, Judge, forgive me for this, but I
12 want to quote from Bill Espy, a comment he made
13 at the end. And, Judge, there was discussion
14 about whether or not the settlement agreement
15 was going to keep people from talking about
16 scores at the presentation. And I think the
17 Court's statement was that it wouldn't. But I
18 think Mr. Espy got this right. And he says: I
19 don't know how you can get up and talk about a
20 score that know one is supposed to -- so no one
21 on the commission is supposed to talk about
22 your score or do anything about your score,
23 then you're going to get up and say your score?
24 I don't think you can do that. I think that
25 would violate the order.

1 And, Judge, I think the point on the First
2 Amendment is because the commission -- and this
3 issue really become ripe in the way they
4 handled the awards -- because the commission
5 discarded the scores, what that meant was, you
6 could go in there and you could articulate in
7 your presentation -- for example, my client.
8 My client is the largest seller of medical
9 cannabis in the world. They are publicly
10 traded in Canada. They have gotten licenses
11 throughout the country. They've gotten
12 licenses internationally.

13 Their application materials that they
14 submitted to the commission were, in many
15 instances, a template of what they've done in
16 other places. One of the areas where they got
17 an F in one of the rounds of scoring was in
18 their security plan, a security plan that has
19 been used to award licenses everywhere, a
20 security plan that's used day in, day out.

21 One of the things my client would have
22 liked to have done had they not gotten new
23 scoring and would like to do going forward is
24 go into the commission and say, let me explain
25 to you why the F you gave me or why the F I

1 received by the third-party scorers is wrong.
2 Let me give you the objective criteria that
3 would demonstrate to you that that F should be
4 an A. And let me demonstrate to you how if we
5 get the points for the A that we should have
6 gotten, we get two hundred more points. We
7 move into the top three. You should award us a
8 license.

9 Now, certainly, right now, there's nothing
10 that prevents us from saying that. There's
11 nothing that prevents us from going to the
12 investigative hearing and saying it. But as
13 Mr. Espy pointed out, they can't consider that.
14 They can't consider that.

15 If during their deliberations while
16 they're awarding licenses, had my client made
17 that argument and had a commissioner said on
18 the record, you know, I heard 3 Notch Roots'
19 argument about their plan and how they should
20 have been scored higher, I like that argument.
21 Based on that argument, I'm going to rank them
22 second.

23 Had they done that, that would have been a
24 commissioner considering the scores. That
25 would have been a violation of your order.

1 That would have been a violation of the
2 settlement agreement.

3 I'll wrap up here in a minute, and I think
4 it's the only point I want to make in addition
5 to Mr. Green, because we agree a hundred
6 percent. I agree with all these arguments.
7 They're all in our papers. But the point is,
8 is that the petition clause of the First
9 Amendment does not just give you the right to
10 go and say whatever you want to to the
11 government. It gives you the right to have a
12 redress of grievances. That's what the First
13 Amendment to the Constitution says. That's
14 what Alabama's Constitution says.

15 When the governing body you're going to go
16 make those arguments to decides beforehand
17 we're not going to consider those arguments,
18 and we're not going to take those arguments
19 into account when we're awarding licenses, that
20 is a violation of the petition clause. It is
21 essentially a restraint on your speech.

22 And what I would say here, Judge, is it's
23 more egregious here in this case because what
24 they're saying they will not consider, no
25 matter how well you say it or no matter how

1 well you articulate it, what they're obligated
2 not to consider is something that's in their
3 rules.

4 That's the problem with this piece, and
5 that's why it violates the First Amendment.

6 THE COURT: Well, I think the First
7 Amendment issue -- I thought I was clear I
8 wasn't restricting what anybody could say.

9 MR. ESSIG: Yes, sir.

10 THE COURT: And you could argue. And
11 you've got a -- we're dealing with semantics
12 when you say what the intent was by
13 disregarding the scores. I think you could
14 argue that. But they weren't going to be bound
15 by it, I think everybody understood, because of
16 some allegations of problems with those scores.

17 MR. ESSIG: Sure.

18 THE COURT: What I'm hearing from your
19 basic argument is, although we might have all
20 agreed that the South Alabama scores for
21 whatever reason were flawed and weren't to be
22 used, the rules and the regulations require
23 some scoring.

24 MR. ESSIG: That's correct.

25 THE COURT: And you're saying that the

1 ranking the commissioners gave didn't take the
2 place of that.

3 MR. ESSIG: That's correct, Judge.

4 MR. GREEN: It's not a score that's
5 based on the statutory and regulatory criteria
6 using an impartial numerical process --

7 THE COURT: Right.

8 MR. GREEN: All that stuff. It's been
9 in their rules from day one.

10 MR. SOMERVILLE: I'd like to add
11 something to all that.

12 So when we were having those negotiations
13 in September, October, whatever, we made some
14 suggestions that they take the statutory
15 criteria that are clear -- if you look at --
16 I'm going to read you a couple.

17 This is the criteria for the cultivator
18 license, Alabama Code Section 20-2A-62. And it
19 says these criteria are applicable to
20 cultivators, and, by extension, integrated
21 facilities.

22 And there are other criteria like this
23 that apply to dispensaries, that apply to
24 processors, that apply to transporters, all
25 that kind of stuff, and there are a few others.

1 But this is pretty simple. And you can
2 imagine how it would be pretty easy to devise a
3 set of criteria -- scoring criteria that would
4 satisfy these requirements. One, demonstrate
5 the ability to secure and maintain cultivation
6 facilities; two, demonstrate the ability to
7 obtain and use an inventory control and
8 tracking system as required under Section
9 20-2A-60; three, demonstrate the ability to
10 commence the cultivation of cannabis --

11 THE COURT: Slow down just a little
12 bit. Mary is writing it down. Just slow down.

13 MR. SOMERVILLE: -- within sixty days
14 of application approval notification; four,
15 demonstrate the ability to destroy unused or
16 waste cannabis in accordance with rules adopted
17 by the department -- and that's not the
18 commission. It's the ag department --
19 demonstrate the financial stability to provide
20 proper testing of individual lots and batches;
21 D, a licensed cultivator shall comply with all
22 the following in accordance with rules adopted
23 by the department.

24 We haven't talked much here previously
25 about the ag department rules, but they are

1 pretty clear and also provide bases for scoring
2 and analysis.

3 All facilities shall be protected by a
4 monitored security alarm system, be enclosed
5 and remain locked at all times. All
6 individuals entering and exiting the facilities
7 shall be monitored by video surveillance and
8 keypad or access card entry.

9 There are a couple of others ones, but the
10 point is these criteria are not that extensive.
11 They come directly from the statute. There are
12 some other ones that are in the regulations
13 issued by the commission. There are others in
14 the regulations issued by the Department of
15 Agriculture. And that's what we suggested in
16 the fall that they substitute the scoring
17 system. That was just never done. But it has
18 to be done in order for them to comply.

19 These criteria have to be complied with in
20 order for this process to move on.

21 MR. ESSIG: Judge, one more point, and
22 I'll be brief.

23 I think one of the questions that you
24 asked at the start of Mr. Green's argument was,
25 you know, can commissioners just decide, you

1 know, I like your tie better than somebody
2 else's tie. And I suppose in the head of an
3 individual commissioner, when it gets time to
4 vote, whether they're considering scores or
5 not, I suppose that is true.

6 But the reason that the rules call for
7 both an objective blind process and a
8 subjective process which allows the
9 commissioners to use their discretion is that
10 when you get to the point that we are now, when
11 you get to the point of awards where you've got
12 to go through the investigative hearing
13 process; and then if you don't win there,
14 potentially come back to court and demonstrate
15 that the commission has been arbitrary and
16 capricious, without objective factors to point
17 to, you have nothing to talk about.

18 If it is purely a speculative process,
19 which is not impartial -- which is exactly what
20 occurred when they awarded licenses in every
21 category in December -- when we all go to
22 investigative hearings, if we do that, we
23 really don't have much to say.

24 They can't consider the scores. We can
25 talk about the scores until we're blue in the

1 face, but it's not going to win us any points,
2 and it can't be something they can use to issue
3 or award a license. And other than that, it's
4 really just maybe a repeat of the presentation.

5 And then we get through the end of that
6 process, and we have to come back to court to
7 demonstrate some level of arbitrary and
8 capriciousness. We've got nothing but the
9 commission's subjective intent at the time that
10 they created this ranking system, as Mr. Green
11 pointed out, which was no scoring.

12 So, just generally, when we look at the
13 framework of the rules -- again, there's a
14 subjective component and there's an objective
15 component. And without the objective
16 component, there is no way for us to argue and
17 represent our clients in a way that keeps them
18 honest.

19 THE COURT: Anybody? I'm going to get
20 y'all in a second. Anybody else from the folks
21 as to why I should grant a TRO?

22 What we're going to do is we're going to
23 take a five-minute break, and then I'm going to
24 hear from the commission. Okay.

25 (Short recess)

1 THE COURT: Okay. Mr. Jackson.

2 MR. JACKSON: Judge, they talked a
3 long time, so I'm not sure where to start, but
4 I'm going to start with this.

5 This is a classic heads-I-win,
6 tails-you-lose situation. They made a
7 strategic decision, apparently, to see what
8 happened at the commission meeting on the
9 awards, and now that they were unsuccessful.
10 Now they're running to court.

11 Mr. Green actually helped me draft the
12 order that you entered following the settlement
13 agreement. This, I'm shocked, I'm shocked,
14 it's like Casablanca where the police officer
15 is shocked about the gambling in the rear room.

16 THE COURT: They had the usual
17 suspects.

18 MR. JACKSON: Exactly.

19 So nothing was said. You know, when the
20 settlement was announced, when we hammered out
21 the order, when you entered the order, nothing
22 was said about a new scoring system needs to be
23 put in place of USA, nothing about that
24 whatsoever. And not until -- and they made
25 that strategic decision. They could have filed

1 a motion for a TRO the day after you entered
2 your order, any day between then and when the
3 commission took action, but they didn't. They
4 sat. They sat, and they hoped that they were
5 going to convince the commission to give them a
6 license -- an award -- and that didn't happen.

7 And now they've got the fall-back of we'll
8 just throw everything we can throw at the judge
9 and see what sticks. That's where we are. So
10 I want to point that out at the beginning.

11 The next thing I want to point out is this
12 is just the same argument about scoring coming
13 back full circle. You will remember very well
14 that -- all the argument about scoring on the
15 front end was how horrible it was and that the
16 commission is using it as the end-all be-all.
17 That's what the licenses are going to be
18 awarded upon based upon scoring, nothing but
19 the scoring.

20 We kept telling you, no, Judge, they've
21 got discretion to accept whatever part of the
22 scoring they want. It's just an informational
23 piece.

24 And now they're coming around, now they
25 want a different scoring system. And they want

1 this different scoring system, not to be a
2 component, but, again, to be the end-all be-all
3 and that the commission is bound by whatever
4 this new scoring system is. So it's just the
5 same arguments regurgitated on the back end now
6 that they've lost.

7 Now, getting into more of the heart of the
8 latest pronouncement by the commission on how
9 the thing was going to proceed was the
10 emergency rule, which, by the way, during the
11 public comment period, no objection, no attempt
12 whatsoever to enjoin that at all going forward.
13 And that is the latest pronouncement of the
14 commission.

15 The emergency rule starts with
16 notwithstanding any other provision of these
17 rules, talking about all the rules, the
18 original rules they are talking about, .10 and
19 .11, this is what is going to happen.

20 And I think it's paragraph five of that
21 talks about, basically, the USA scoring and the
22 fact that applicants can comment on that and
23 say why my score should be, you know, better
24 than what they're showing, blah, blah, blah,
25 all that stuff.

1 And I think it's paragraph six that talks
2 about the ranking that the commission is going
3 to do totally separate, you know, from the
4 scores.

5 We did enter into the settlement
6 agreement. The settlement agreement stated
7 that a scoring system would not be used. So
8 that paragraph five was enjoined. Paragraph
9 five is based upon .10 and .11.

10 I mean, he's right that the emergency rule
11 5 said we're still going to consider -- the
12 commission can still use as information the USA
13 scoring. Y'all in letter brief or presentation
14 or whatever can make whatever you want to of
15 the scoring to the commission. That was all
16 enjoined, taken away.

17 What that left of the emergency rule was
18 the ranking system that the commission used.
19 And they went to the letter. They did exactly
20 as the rule says -- as the emergency rule says.
21 And that's what it was, a ranking system. It's
22 not a scoring system. They think that their
23 ranking was the end-all be-all.

24 I think it was Specialty, an integrated
25 facility, I believe they were twenty-ninth or

1 somehow because they didn't have a scoring
2 system did not take into account the statutory
3 criteria, the statutory factors, is nothing but
4 pure speculation, especially in light of the
5 fact that Justin briefed them on both
6 occasions.

7 To my first point, integrated facility
8 people watched that whole process for the
9 nonintegrated people, the presentations, what
10 the commission did in terms of ranking, how
11 they took up applicants. And there was time in
12 between dealing with the nonintegrated folks
13 and the integrated folks for them to come back
14 into court, saying, Judge, we just saw a train
15 wreck and before the train wreck happens again,
16 we want you to enjoin it.

17 MR. SOMERVILLE: We did.

18 MR. DUNGAN: We did.

19 MR. JACKSON: No, they didn't.

20 MR. SOMERVILLE: I did.

21 THE COURT: Wait, Mr. Somerville.

22 MR. JACKSON: Well, Jemmstone did.

23 The point being, again, they can't show
24 any irreparable harm because they watched this
25 process and they basically acquiesced in the

1 process.

2 The other thing that's missing is you
3 haven't heard of them say any of these people
4 that were awarded should not have because they
5 didn't meet the statutory criteria. Now, that
6 can be part of the investigative hearing.

7 Again, it shows no irreparable harm now.
8 There's no reason for you to enjoin anything
9 because they have an opportunity in the
10 administrative hearing -- the investigative
11 hearing to bring out whatever it is that they
12 want to bring out. And so they've got that
13 opportunity to do that.

14 The other thing that's missing -- and I
15 think I did touch upon this -- they keep
16 talking about this was supposed to be purely
17 objective. No, it wasn't. The rules and the
18 statute both say that the commission has
19 discretion in making the awards. All they've
20 got to do is consider the statutory criteria;
21 otherwise, they've got discretion. And you
22 haven't heard them say that any awardee was not
23 qualified, was not suitable to get an award.

24 So there's no allegation or proof at this
25 stage whatsoever that somebody -- licensee -- I

1 mean applicant A should not have gotten an
2 award. They haven't said that. There's an
3 absolute lack of proof or allegation of that.

4 The other thing I would note, Judge, is
5 that your -- the settlement that we reached --
6 and the courts encourage settlements. I know
7 Your Honor encouraged us to settle it, and we
8 did -- the settlement agreement would not mean
9 anything if the commission then had to do what
10 they're talking about and be bound by that,
11 because what that would do away with is their
12 discretion.

13 So they can say whatever they want to say
14 about it being it's supposed to be totally
15 objective. No. It's totally discretionary is
16 what it is. As long as they find that an
17 applicant was a suitable applicant based upon
18 the statutory criteria, they could go ahead and
19 award.

20 Once they issued five in the integrated
21 facility category, they couldn't issue any
22 more. Simple. That's just a matter of fact.

23 (Brief interruption)

24 MR. JACKSON: I think I misspoke
25 previously when I said paragraph five of the

1 emergency rule. I meant paragraph four.

2 What was left was paragraph six that talks
3 about the ranking and the order that the
4 applicants will be taken up.

5 But one thing I would note about this
6 emergency rule in paragraph five, 5(c) says the
7 commission remains the primary decision-maker
8 with regard to licensing and each commissioner
9 retains full discretion to act independently of
10 the previously generated third-party scoring
11 and evaluations in applying the statutory and
12 regulatory criteria.

13 So it's total speculation on their part
14 that the commission -- each individual
15 commissioner and the commission as a whole did
16 not make evaluations and determinations
17 applying the statutory and regulatory criteria.

18 Judge, the other thing I would note is
19 that back in August when we were here,
20 Jemmstone filed this on August 23, 2023. It's
21 document 230. And basically what Wilson Green
22 put in his pleading was, assuming the Verano
23 case results in an adjudication which
24 recognizes the validity of the commission's
25 actions in voiding the June 12 license award,

1 the commission will proceed to consider license
2 applications in a series of open meetings to be
3 conducted as follows. The procedures outlined
4 below would apply to integrated facility
5 applicants but could be adopted for other
6 license types. And then it goes through a
7 proposed plan of action, so to speak, a
8 proposed procedure, which is exactly what the
9 commission did when it met on both times, both
10 with nonintegrated facilities and with the
11 integrated facilities.

12 So it's somewhat disingenuous now for
13 Mr. Green to come before the Court and say, oh,
14 that was all wrong. What I really meant to say
15 is that there should be a new scoring system
16 that they should develop before they meet again
17 and make awards.

18 The other thing that's left out that I
19 continue to bring up and remind the Court of is
20 what we're talking about here is a privilege.
21 It's not a property right. It is a privilege.
22 And the commission has discretion to award
23 these privileges -- these privilege licenses as
24 they see fit, with or without scoring.

25 Even if there was a substitute scoring

1 system, the commission doesn't have to follow
2 it. It's not the end-all be-all they want it
3 to be. They want to evaluate it to be, that's
4 it, I was number one; I should get a license.
5 That's not all the commission has to take into
6 account, but that's what they're trying to get
7 the Court to buy into.

8 Judge, the answer here is not to stop this
9 process, it's to allow it to go on. The ones
10 that wanted to have requested investigative
11 hearings. Those investigative hearings should
12 proceed in due course.

13 We don't know what's going to come out in
14 investigative hearings. We don't know what's
15 going to happen. Nobody has got that
16 clairvoyance. They can't assume the worst, so
17 to speak, for their client. All that would be
18 is an assumption. All it would be would be
19 speculation at this point.

20 What they're trying to really do is to
21 avoid that process, avoid an appeal, and they
22 want you to stop the process now. They simply
23 have not made the showing to show that they are
24 entitled to a TRO at this time.

25 We do think, Judge, this Verano issue is

1 in pleadings of at least four of these people,
2 Southeast, Pure by Sirmon, Theratrue,
3 Yellowhammer. We think that's low-hanging
4 fruit.

5 We think it's very easy for the Court
6 relying upon what the Court did in the Verano
7 case to deny the relief sought by those four in
8 their filings, that they can in fact go up on
9 appeal and try to get consolidated with Verano.
10 That seems to us to be low-hanging fruit and
11 something that the Court should do.

12 THE COURT: And I'll say I'm inclined
13 to do that, but I want to hear why I should.

14 MR. BROM: May I just --

15 MR. ESSIG: You go ahead.

16 MR. BROM: I'll just say this one
17 thing about that. There are factual
18 differences in the Verano situation and the
19 revocation that occurred on October 26th. We
20 have our filings pending. There are no
21 responses filed yet -- they're not due -- but
22 we don't have any responses yet, so until we
23 can even have that discussion of their
24 response, a hearing to see what -- and
25 appropriately build a record, it certainly

1 would be inappropriate for the Court to be
2 making any determination before we even have a
3 filing.

4 THE COURT: That's what I was going to
5 say. I'll let you put whatever you want on the
6 record. I'm letting y'all know I'm inclined to
7 go with what I ruled previously, and y'all can
8 point out, I guess, at another time.

9 MR. BROM: Yes, sir.

10 Your Honor, I would also just point this
11 out that Mr. Green has correctly stated this
12 since the very beginning where he -- I don't
13 know if people have been listening to him, but
14 he has been whispering in the corners, the
15 Verano problem.

16 This is the very reason why at this point
17 today we really have no other options other
18 than a stay of further proceedings because the
19 Verano problem -- and I'm just summarizing that
20 meaning all of these legal issues -- regardless
21 of how these legal issues ultimately get
22 resolved, I don't think anybody can
23 legitimately say that these are all baseless,
24 without merit arguments.

25 These arguments have to be resolved. And

1 what we have been doing here so far has been
2 digging the hole deeper. We just keep kicking
3 the can down the road, and we keep ignoring the
4 Verano problem, which is all the legal
5 challenges that have to get resolved.

6 What on Earth are we going to do if we
7 start issuing integrated facility licenses, six
8 months from now, an appeal court says that was
9 wrong, are we going to start tearing down
10 buildings? Are we going to start calling back
11 licenses? I mean, are we going to make
12 criminals out of the people who now have a
13 facility full of cannabis without a license? I
14 mean, these issues have to be resolved.

15 And I understand the commission wants to
16 just ignore them and just issue licenses, but
17 if we don't do the responsible thing, which is
18 hit the pause button, address these legal
19 issues definitively so that we can move
20 forward, all we're doing is delaying the
21 inevitable, which is we're going to be back
22 here every six months doing the same thing over
23 and over and over.

24 We've got to stop the merry-go-round and
25 just say we're hitting the pause button. We're

1 going to address these legal issues. We're
2 going to let the appeals go up. And then, once
3 we're done, then we can move forward.

4 Until then, we're just wasting our time,
5 Your Honor.

6 MR. DUNGAN: And I --

7 MR. MILLS: Hold on, Judge. Can we
8 finish our argument, because I'm waiting for
9 Mr. Jackson to get through.

10 MR. JACKSON: Yes, I mean, I kind of
11 got cut off, too.

12 THE COURT: And I think -- I don't --

13 MR. BROM: My apologies.

14 THE COURT: I don't want to belittle
15 that. That's an issue I'm going to get to at
16 the end about -- because that's why I asked
17 Mr. Main where we were on the appeal.

18 MR. JACKSON: So, Judge, what the
19 commission wants -- what the commission wants
20 is product out to the people that need it.
21 That's what the commission wants.

22 Verano asked for a stay at Civil Appeals,
23 and they said -- they told them no.

24 Okay. That's what the commission wants,
25 to issue the licenses, to get them up and

1 operational, to get the product out.

2 The needs of the public outweigh any needs
3 these people that are seeking a privilege
4 license have, and that's paramount, the needs
5 of the public.

6 And that militates towards staying
7 anything and issuing a TRO. Let things
8 progress.

9 THE COURT: Mr. Mills.

10 MR. MAIN: Your Honor, just so we have
11 a clean record. On behalf of Verano Alabama,
12 we did not request a stay in the Court of Civil
13 Appeals. That was another litigant in the
14 master case.

15 MR. MILLS: Judge, Wallace Mills for
16 Specialty Alabama.

17 Plaintiffs are coming to court today
18 asking for equitable relief, but they come with
19 unclean hands.

20 They come with unclean hands because they
21 knew about the process that the commission was
22 going to use, if not during the mediation in
23 this court, because it was a part -- some of
24 these things were part of the mediated
25 agreement -- then certainly on October the 12th

1 when the commission adopted that rule.

2 Now, that's ten weeks ago, all right?

3 They didn't come in here complaining about it.

4 They participated in the process, okay, that
5 they now say that they want relief from.

6 Not only did they participate, they
7 allowed the commission to invest in the
8 process. They allowed all of the applicants to
9 invest in the process, okay?

10 So now they want you to grant them
11 equitable relief in a process that they
12 materially participated in. They didn't bring
13 it when they should have, okay, so that gives
14 them unclean hands.

15 Second of all, if their argument is that
16 that the commission didn't follow their rule,
17 they still have to exhaust their administrative
18 remedies.

19 The Administrative Procedures Act gives
20 one exception to the exhaustion of
21 administrative remedies; and, that is, if
22 you're arguing as we argued earlier in this
23 case and was argued that the government entity
24 is using a rule that it didn't put out for
25 public comment and pass appropriately;

1 otherwise, you've got to exhaust your
2 administrative remedies.

3 Now, I'm a little bit of a simpleton
4 sometimes, but I do know that the Court in
5 evaluating --

6 THE COURT: You don't want the Court
7 to take notice of that?

8 MR. MILLS: You may if you like.

9 MR. RAGSDALE: No objection.

10 MR. MILLS: So I do know that the
11 Court has to look at the plain language of the
12 rule or statute when interpreting it, okay? So
13 they're complaining mostly when they're talking
14 about this blind scoring process and they've
15 got to replace it and all of that, so Rule 3-10
16 says at least a portion of the review shall be
17 conducted under blind conditions, and they have
18 to be ranked or averaged using an impartial
19 numerical process.

20 Well, they did that. We've been in here
21 and talked ad nauseam about that process. They
22 sent it down to South Alabama. That was a
23 blind process. They were numerical values
24 assigned and all that.

25 The problem is -- and the lynch pin in

1 their argument -- is this. They say, well, now
2 you've got to replace it with something else.
3 Well, no, you don't because the rule -- the
4 plain language of the rule says any independent
5 consultant selected by the commission will
6 provide recommendations for the commission to
7 consider, but the commission shall not be bound
8 by that recommendation, and the decision as to
9 the final approval or rejection of license
10 shall remain the province of the commission at
11 all times.

12 So, in the very next sentence, where it
13 says you've got to have this scoring process
14 and part of it has got to be blind, it says,
15 but they're not bound by it.

16 So when they came in here in the mediation
17 and agreed for you to enter an order saying
18 they're not going to consider the scores, they
19 complied with the rule. The rule doesn't
20 require them to replace that with another
21 scoring system. It absolutely does not.

22 So the plain language of this rule the
23 commission has met on each point. They have
24 done each part of this. So they've not
25 violated the rule.

1 All right. Now, the emergency rule,
2 paragraph five, that language that talks about
3 how they're going to -- they can still rely on
4 the scores, that's permissive. That language
5 is permissive. It says they may -- I believe
6 may or something. It doesn't say they have to.
7 I mean, that would defeat the point of having
8 the rule and having these presentations and all
9 that. So it's permissive.

10 They didn't violate that rule either.
11 There's nothing in that rule that says they
12 have to replace it with a whole other scoring
13 and numerical system. They don't.

14 Even if they did replace it with a
15 numerical system, according to 3-10 they
16 wouldn't have to follow it. And they have now
17 complied with their statute.

18 I guess -- you know, I don't know that it
19 needs to be addressed, but this First Amendment
20 issue. You know, it occurs to me that people
21 go and protest out in front of government
22 buildings all the time asking government
23 entities to do things that maybe the government
24 entity can't do. It might be illegal for them
25 to do.

1 They say, well, we couldn't say to the
2 commission, hey, we had a great score; or, hey,
3 let me explain our bad score, because they
4 couldn't consider it. Well, the protesters on
5 the sidewalk can still say what they want to
6 say even if the government agency inside the
7 building can't do what it is they're asking
8 them to do. That is not a violation of free
9 speech. It happens all the time.

10 That's all. Thank you, Judge.

11 THE COURT: Anybody else?

12 Mr. Webster, do you want to add anything?

13 MR. WEBSTER: No, sir, Your Honor.

14 MR. GARRETT: I actually would like to
15 say something, Judge, if I may.

16 THE COURT: Mr. Garrett.

17 MR. GARRETT: I practiced law with a
18 guy that went to Harvard Law School, believe it
19 or not, and he got out of the practice of law.
20 And I said, Upchurch, why did you do that? And
21 he said practicing law is like killing
22 mosquitoes with sledge hammers.

23 The Legislature said the people need
24 treatment. Flowerwood has been given three
25 licenses. It's time to land the plane.

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Thank you.

THE COURT: You're putting your sledge hammer down?

All right. Mr. Jackson.

MR. JACKSON: Judge, I do want to address one thing that Mr. Somerville raised.

He said something about we don't know why people got licenses. We don't know why we were denied. We weren't told, blah, blah, blah. You asked the question did they have to do that. And he said yes.

What he's basing that upon is his contention -- he's made this contention before we got here today -- is that this is a contested case. And so, on the front end, all those niceties, so to speak, all the bells and whistles of a contested case have to be present before the commission can award.

But the statute, the AAPA, makes it clear when you have a multi-stage proceeding like this is with an investigative hearing on the back end that the governmental agency can provide that on the back end with the findings of fact and the reasons and all that kind of stuff.

1 So I just wanted to point out to the
2 Court -- I just wanted to address to the Court
3 that argument, that this is not -- our position
4 is that this was not a contested case on the
5 front end up to the awards; and that on the
6 back end, it will now be a contested case with
7 the right of the other parties to intervene and
8 all of that.

9 THE COURT: I was asking -- let me
10 ask. That's a part of the administrative
11 remedy that would be available to them?

12 MR. JACKSON: Right.

13 THE COURT: Okay. Mr. Somerville.

14 MR. SOMERVILLE: May I address that,
15 Your Honor?

16 THE COURT: Sure.

17 MR. SOMERVILLE: He's talking about
18 the final order, that's, I think, 41-22-15.
19 41-22-12 says that they have to give us notice
20 of whatever they're contending beforehand,
21 issue charges, explain why somebody didn't get
22 a license, whatever it is.

23 We're going into this thing totally blind,
24 and that does violate the Administrative
25 Procedures Act.

1 Another thing he said, he made -- he
2 keeps -- and part of it is based on this
3 right/privilege distinction he keeps making.
4 If I can figure out how to work this video game
5 console I have here -- Section 41-22-19 of the
6 Alabama Code, which is part of the AAPA, says
7 the provisions of this chapter concerning
8 contested cases shall apply to the grant,
9 denial, revocation, suspension or renewal of a
10 license.

11 If you read down to the comment
12 accompanying the section, they quote case law
13 that says: We need not enter into a discussion
14 whether the practice of law is a right or a
15 privilege. Regardless of how the State's grant
16 of permission to engage in this occupation is
17 characterized, it is sufficient to say that a
18 person cannot be prevented from practicing
19 except for valid reasons.

20 That's the rationale behind the
21 Administrative Procedure Act. And whatever
22 else you say, the AAPA is applicable to the
23 proceeding that we're about to enter into,
24 okay, and there's no way they can comply with
25 the requirement of a notice in advance of the

1 hearing because nobody knows -- even the
2 commissioners don't know -- why we were granted
3 or denied licenses. There's no way to go back
4 and recreate that.

5 We will be -- that happened at a specific
6 instant in time that cannot be recreated.
7 Maybe they didn't like my tie. I was wearing a
8 different one that day. But there's no
9 possible way for anybody to go back and figure
10 out why my client didn't get a license, why
11 Wallace's got a license this time -- he was
12 probably wearing that suit, but, I mean, I
13 don't know. But there's nothing, no findings.
14 There was no deliberation.

15 And getting back to the college football
16 play-off analogy that Mr. Jackson made last
17 time, the people on the college football
18 play-off committee knew that their decision to
19 choose -- was it Alabama over Florida State?

20 MR. RAGSDALE: Yes, it was Alabama.

21 MR. SOMERVILLE: That was a kind of a
22 -- anyway, they, unlike the commission, had an
23 explanation ready to go why they chose Alabama
24 over Florida State, why they chose Texas over
25 Florida State. And the commission is not going

1 to tell us why they chose Alabama -- why did
2 they not chose Alabama Always over Florida
3 State, okay?

4 And the point is that we're going into
5 this investigative hearing process, the process
6 is irremediably flawed for the reason that we
7 don't know why we didn't get a license. We are
8 going to be punching at shadows. There's no --
9 not even a semblance of due process.

10 And we keep doing this. We have argued
11 from day one that the commissioners need to
12 make their decision based on the statutory
13 criteria. That was in our first complaint.
14 It's in our second complaint, third complaint,
15 fourth complaint and fifth complaint.

16 Every time -- whether it's a violation of
17 the Open Meetings Act or the Administrative
18 Procedures Act, or whatever, they get a
19 do-over. Okay. It's like fishing with a catch
20 and release program. Okay. Catch a fish,
21 throw it back; and the fish keeps jumping back
22 in the boat, okay? This is going to continue
23 happening until this Court does something about
24 it.

25 They accused us of not complaining about

1 this arbitrary and capricious ranking program.
2 Okay. We didn't figure out until after they
3 started engaging in the process with the
4 lower -- with the dispensaries and stuff like
5 that, but we went ahead and filed something in
6 this court because we thought it was going to
7 be an unfair process. And it turned out to be
8 as unfair as we thought it was going to be.

9 We didn't wait around. We asked this
10 Court for relief. The Court said it was
11 premature. That's fine. Here we are again.

12 I want to -- something that sort of caught
13 my ear. I heard Mr. Jackson say that Mr. Aday
14 has been having meetings with commissioners
15 about what they need to consider in the
16 licensure process. I have not heard those
17 discussions in public. I suspect based on what
18 I just heard there may have been private
19 conversations about that. We submit that that
20 is likely a violation of the Open Meetings Act,
21 and we need to --

22 THE COURT: It could be an
23 attorney/client privilege.

24 MR. JACKSON: The fact of the matter
25 is it was at the beginning of the hearings

1 before they took any actions when Mr. Aday
2 briefed them in public. There's a court
3 reporter record of it.

4 MR. SOMERVILLE: If that was the
5 extent of it, then I withdraw that.

6 That's all.

7 MR. BROM: Your Honor, can I -- Steven
8 Brom for Theratrue. I just want to address a
9 couple of things that were brought up.

10 First, this representation that somehow
11 we've just sort of sat back and didn't do
12 anything, that's just procedurally not correct.

13 And I just -- our license wasn't revoked
14 until October 26. We immediately undertook the
15 actions that we were required to.

16 We filed a request for a hearing. I
17 believe that was a twenty-one-day requirement.
18 We filed a request for a hearing with the
19 commission. We haven't received a response
20 back from that.

21 I think they take the position they don't
22 have to respond because they don't use the
23 revocation. But, regardless, to protect our
24 rights and to not sit on hands, as they falsely
25 accuse us of, we went ahead and did it anyway.

1 We also filed a notice of appeal, which
2 again, they haven't responded to. So we didn't
3 sit on our hands.

4 And, as Your Honor very well knows, we
5 also filed a separate petition for judicial
6 review seeking declaratory relief and
7 injunctive relief. All of this was done prior
8 to the December 12th vote Alabama, as they very
9 well know.

10 So the suggestion by Trulieve and the
11 commission that we sat on our hands and did
12 nothing, that's just false. That's just not
13 supported in the record.

14 And this other representation, well, you
15 should have filed a TRO to shut down the
16 December 12th vote, based on what? I could
17 hear them laughing at me doing that. They
18 would say, Judge, the vote hasn't even occurred
19 yet, and he's in here claiming harm. Don't we
20 at least need to see what the vote is before he
21 can come in here and claim harm.

22 Of course any suggestion or attempt to
23 shut down the vote before it even took place,
24 they would have said, Judge, that's speculative
25 harm. They're going to have to let the process

1 play out.

2 And I think Mr. Somerville made that -- he
3 attempted that. And Your Honor made the ruling
4 it's premature. We're going to have to wait
5 until this plays out. And now for them to
6 suggest, well, you've waived it by you didn't
7 act timely.

8 And the settlement agreement, as Your
9 Honor very well knows, we objected on the
10 record. It's noted in the -- all of our
11 objections, arguments, they're all preserved,
12 okay?

13 And throughout this process, we have done
14 exactly what we were asked by the Court. The
15 Court has asked all of us, please meet. We'll
16 make some space available. Please meet. Y'all
17 try to come up with some solutions here. We
18 did that in accordance with the Court's
19 instructions.

20 And now what I'm hearing from Trulieve and
21 the commission that instead of complying with
22 Your Honor's wishes, instead of meeting with
23 the parties and giving everybody a fair
24 opportunity to hopefully try and come up with a
25 resolution, we should have been standing up

1 screaming, absolutely not. We're not going to
2 participate in any of this, and we're objecting
3 to anything; and I'm going to go file a TRO
4 this afternoon, every step of the process,
5 anyway, I think it goes without saying, that's
6 inappropriate and absurd.

7 They keep saying we haven't exhausted our
8 administrative remedies, I guess, being the
9 investigative hearing process. But I think
10 it's already been established they intend to
11 issue licenses on January 9th.

12 This investigative hearing process, it
13 can't even take place the earliest until
14 February. They have some rules that they
15 adopted that don't even take place until
16 February, so they want us to seek an
17 administrative remedy that is meaningless
18 because the licenses will have already been
19 issued.

20 Further, we don't even have rules. There
21 used to be a form on their web site to seek an
22 investigative hearing. That form, without
23 explanation, it disappeared from the web site.

24 When certain parties like us contacted
25 them and say how do we request an investigative

1 hearing, your form disappeared. We got the
2 generic email back that said, well, you just
3 email us at applications.

4 And then they also said -- I didn't get
5 this particular email, but they sent it to
6 others -- and we will also provide you with
7 further information about how the process is
8 going to work. To my knowledge, I haven't
9 received that. To my knowledge, I don't think
10 anybody has received this email about how this
11 process is going to work.

12 So they want us to wait for an exhaustion
13 of an administrative remedy. We don't even
14 really know what that is yet. We don't have a
15 process in place for it. And, oh, by the way,
16 they will have already issued all five of the
17 licenses and allow those parties to commence
18 operations while we're just supposed to sit on
19 the sidelines and wait.

20 I mean, wouldn't we really be doing
21 exactly what they're now accusing us of,
22 sitting on our hands and not doing anything.

23 So we don't file a TRO; we get attacked
24 for sitting on our hands. We file a TRO; it's
25 premature. Well, which is it?

1 THE COURT: Let me ask, did you want
2 to put this in the record, mark this, this
3 ranking?

4 MR. BROM: Might as well.

5 THE COURT: Why don't you --

6 MR. FOX: Your Honor, it's an exhibit
7 to Mr. Green's complaint.

8 THE COURT: Okay. It's in the
9 complaint?

10 MR. GREEN: Yes, it's Exhibit 3 to my
11 complaint.

12 THE COURT: Okay. I just want to make
13 sure it's in the record. And that's your only
14 copy, so we'll give it back to you.

15 MR. BROM: I'll just make it clear for
16 the record, Your Honor, what you're referring
17 to is the integrated facility compiled
18 application rankings as posted on the
19 commission's web site.

20 THE COURT: Right, which is
21 Jemmstone's 3.

22 Mr. Ragsdale.

23 MR. RAGSDALE: Your Honor, just to
24 follow up a little bit on what my colleague
25 said. Mr. Jackson puts it perfectly. We're

1 not allowed to assume that the worst would
2 happen, right? Well, that's exactly what he's
3 accusing us of having done. We should have
4 assumed the worst back early. So, according to
5 Mr. Jackson, we're both too early and too late.
6 And it's got to be one or the other.

7 Now, I'm of the belief that it wouldn't
8 have been a good idea for me to challenge the
9 process when I was the number one awardee of
10 the license. That seemed like a bad idea. My
11 client advised against it.

12 Until you realize the process has worked
13 out in the way that it has, I don't think
14 you're an aggrieved party. And we now are an
15 aggrieved party. We went from being number one
16 to not even being in the top ten with no
17 explanation, no change in anything other than
18 other parties were allowed to make a
19 presentation that also was not received in any
20 fashion.

21 I think that the important criteria is the
22 commission has to follow its own rules.

23 Mr. Jackson makes the point that it is
24 ultimately discretionary with the
25 commissioners; and that is true, but they put

1 in place rules to make sure that it was not
2 arbitrary.

3 And there is a difference between
4 discretionary and arbitrary. And in this
5 instance, the rule they put into effect
6 required the numerical scoring, the objective
7 scoring, and, importantly, some blind element
8 to it so that it was not a political contest.
9 I know that happens in Montgomery from time to
10 time, I've heard. But this commission,
11 particularly because of its purpose -- and I
12 laud Mr. Jackson for pointing out the public is
13 waiting on this important medicine to get to
14 them, but the State and the Legislature
15 recognized that that process had to have some
16 integrity to it, and it had to have some
17 objectivity to it. And it couldn't be just the
18 same good ol' boy system that, frankly, has
19 ruled in the past; and I say that as a good ol'
20 boy.

21 And in this instance, the commission
22 adopted the rules but then decided to disregard
23 them, and that cannot be -- the rule can't be,
24 you must adopt a system but because it's
25 discretionary, you can just ignore the system

1 completely, or, more importantly, abrogate it
2 completely, make it go away.

3 So I think that that process, as Mr. Green
4 said earlier, is a pretty easy legal issue.
5 They did not follow their own rules. They
6 can't do that and then hide behind the
7 discretionary nature of the award.

8 The last thing I would say about the
9 investigative hearings -- and I think this is
10 critical -- Mr. Jackson makes the argument that
11 nobody here has made an argument that one of
12 the five awardees should be kicked out. And,
13 ultimately, that's what the investigative
14 hearing is going to have to boil down.

15 It's going to do no good for my client to
16 go in and say I was worthy. I've got to prove
17 that one of the five was less worthy. And in
18 order to do that, we've got to know what was
19 the criteria that they used that put me out of
20 the top five and put somebody else in the top
21 five. And, right now, we have no guidance on
22 that at all. And according to them, they don't
23 have to give it to us.

24 How do we make the argument that number
25 three should have been number ten and that

1 number ten should have been number three if we
2 have no standards, no objective criteria.

3 At least with the scores we could argue,
4 look, we scored way above them on
5 pick-a-subject. We can't do that now. We have
6 no basis whatsoever. And the rules require
7 that they provide those to us before the
8 investigative hearing.

9 I think that cries out for us being
10 afforded the opportunity to do discovery in
11 this case. And we have filed a motion asking
12 for us to be allowed to do discovery.

13 We believe -- and believe there is
14 sufficient evidence to support that there were
15 open meetings violations involved -- not the
16 one Mr. Somerville referenced -- but the fact
17 that some number of commissioners met before
18 the actual meeting and comments were shared and
19 decisions were talked about before it went on
20 the record.

21 We would like the opportunity to do
22 discovery to prove that, because we think, as
23 this Court has recognized, that would cause a
24 challenge to the integrity of the meeting as a
25 whole if that happened. And we believe that it

1 did, and we believe we should be given an
2 opportunity to prove it.

3 Your Honor, this process has been flawed,
4 to say the least. Mistakes have been made.

5 THE COURT: How much discovery are we
6 talking about? Are we talking the one
7 deposition Mr. Espy wanted?

8 MR. RAGSDALE: I need more than the
9 one deposition Mr. Espy wanted. We think we
10 should have an opportunity to do expedited
11 discovery, some limited number of depositions.
12 You know, this is not going to be a case that's
13 going to be document intensive. I don't think
14 there were a ton of documents exchanged. But
15 it is going to require the oral testimony of
16 some of the folks involved. We can do that
17 quickly. We can get it done on an expedited
18 basis. But without that, we're left handcuffed
19 to be able to prove how we were mistreated in
20 this process.

21 Thank you, Your Honor.

22 MR. BROM: Your Honor, can I just say
23 one last thing.

24 It's been stated repeatedly by license
25 winners -- I know, because I used to make this

1 argument; it was a lot cozier on that side of
2 the room -- but we have, you know, the public
3 need for the product. Well, the Court has to
4 weigh the public's need for due process and the
5 Administrative Procedures Act. And if there
6 are violations and there are issues that need
7 to be resolved, and if rule-making was not done
8 appropriately, there are procedural due process
9 rights that have not been complied with, those
10 are a factor, too. The public's need for
11 medical marijuana -- cannabis -- would not
12 override those concerns.

13 And, in fact, the State of Alabama has
14 operated for over two hundred years without
15 medical cannabis where we haven't operated it,
16 so, I mean, not to go down this road, but we've
17 been doing due process rights for a while. And
18 we have to take those into consideration as
19 well. And the public's need for medical
20 cannabis doesn't override these due process
21 rights.

22 THE COURT: Mr. Green.

23 MR. GREEN: Judge, just as a couple of
24 final comments, I think, I'm not going to try
25 to cover things that have been covered ably by

1 other counsel, but Mr. Jackson had much to say
2 invoking my name, so I do feel the need to say
3 a few things in response.

4 As Your Honor is aware, you asked me on a
5 number of occasions in this case to be the
6 scrivener, essentially, for the group. I've
7 happily done that and will continue to happily
8 do that.

9 I think it is Mr. -- my friend,
10 Mr. Jackson -- and I say that sincerely --
11 called me disingenuous for saying something
12 earlier. I think it's disingenuous for
13 Mr. Jackson to try to use my status as a
14 scrivener for everyone's benefit somehow
15 against me as if I were some active participant
16 in the drafting of the mediation order as a
17 litigant. I wasn't. My client never raised a
18 scoring issue ever, ever in this process. And
19 so I think that needs to be made clear.

20 Number two --

21 THE COURT: I never took it any way --

22 MR. GREEN: Nor did I. Nor did I.

23 But I want it to be very clear on the record
24 that I was simply acting as a scrivener and
25 trying to help everybody get that order put in

1 place. And I have never on behalf of my client
2 taken a position --

3 THE COURT: I will say -- I will say,
4 Mr. Green, for the record, I've asked you --
5 I've told you what I wanted the orders to say.

6 MR. GREEN: Absolutely. Absolutely.

7 But I think that's important because I
8 heard a lot from commission counsel about
9 people making the strategic decision to see
10 what happened and never -- never taking
11 positions and basically trying to create the
12 impression that they got blind-sided when they
13 threw the scores out. And that's just a
14 falsehood. That is not true.

15 As I say, it came as a shock to me when
16 they threw the scores out voluntarily because
17 they knew, I knew, everyone in this room knew,
18 they had a set of regulations that had existed
19 from day one drafted by Mr. Jackson's partner
20 sitting next to him in this courtroom right
21 now -- another friend of mine for thirty years
22 from law school -- and they knew what their
23 rules provided. They knew they had to follow
24 those rules.

25 And to hear them now say, well, we really

1 don't have to follow the rules because the
2 commission has the discretion to essentially
3 take those scores and throw them out, what kind
4 of process is that?

5 I understand that the commission can use
6 its judgment and its discretion; but as
7 Mr. Ragsdale rightly said, using one's
8 discretion in making judgment calls is very
9 different from not having the information at
10 all at your disposal to consider or not
11 consider.

12 The rules, mandatory as they have been,
13 from day one, require that they do just that,
14 that they score with objective data. So when
15 they threw the South Alabama scores out, the
16 obligation was on them to score and to score in
17 the blind in the part and to score using
18 statutory and objective criteria.

19 Now, the only thing I've heard in response
20 to that, the only thing -- I was very curious
21 to see what commission counsel would say,
22 because, as we said, it's not close, dead to
23 rights on the fact that they did not do this.
24 And what I heard is what I thought I would
25 hear, which is that the emergency rule just

1 takes all that and rips it out. That's what
2 he's saying. That's what he's saying,
3 notwithstanding anything else, notwithstanding
4 any other provision of the commission's rules.

5 But read the rest of that rule. There's
6 no reference to .10 or .11, no reference to .10
7 or .11. .10 or .11 wasn't affected at all by
8 these rules, which means that when they decided
9 to voluntarily throw the scores out, nothing in
10 the emergency rule says you could just take
11 your permanent rule and throw it out. They
12 can't do that.

13 And so, as a legal issue, it's not a close
14 case. As a practical reality, and given all of
15 the Strum and Drang we've all gone through in
16 all of this, you know, I understand the
17 reluctance to not want to -- not want to get
18 engaged, but the legal issue isn't close. This
19 process is dead.

20 Thank you.

21 MR. BROM: Your Honor, are we going to
22 ask him to define that for the rest of us?

23 MR. ESSIG: I think Mary is going to
24 have to define it or use her spell checker.

25 Judge, one last thing, and then I --

1 hopefully, I'm wrapping it up for our side. A
2 couple things I want to address that Mr. Mills
3 raised.

4 First of all, if you look at our
5 complaint, we do have a claim that the way that
6 the commission decided to discard the scores
7 and the way the settlement agreement and the
8 order was done, we do have a claim that that is
9 a new rule that violates the Administrative
10 Procedures Act.

11 Mr. Jackson actually made that argument
12 himself when he stood up and said when that
13 settlement agreement was reached -- which, by
14 the way, we objected, which, by the way,
15 somehow bound seventy applicants that weren't
16 even in this courtroom or part of that
17 litigation -- now, my count may be wrong -- but
18 he said it eliminated an entire paragraph from
19 the emergency rule. That is a new rule, not
20 subject to public comment, not subject to any
21 sort of procedure under the Administrative
22 Procedures Act. We do have a claim for that in
23 our complaint.

24 The second issue I want to raise -- and
25 you may be tired of hearing it, Judge -- is the

1 First Amendment claim. With all due respect to
2 Mr. Mills, my client is not somebody standing
3 on the street with a sign walking around making
4 some argument about abortion or firearms or
5 whatever else.

6 My client is a company who has expended
7 millions of dollars coming into the state of
8 Alabama. And once they were an applicant that
9 was deemed submitted, they have a right under
10 the statute -- they have a right under their
11 rules that my client has complied with every
12 step of the way to have an objective blind
13 scoring process considered by the commission.

14 And it is a violation of their First
15 Amendment rights if these commissioners cannot
16 hear an argument they are statutorily and
17 administratively obligated to hear. That is a
18 First Amendment violation. It's not like an
19 ordinary situation.

20 MR. BLOOM: William Bloom on behalf of
21 Trulieve Alabama. I feel like Beetlejuice. If
22 my name is said three times, I appear.

23 I think there's a bit of a misnomer
24 occurring right now, vis-a-vis, irreparable
25 harm. And that is frankly because plaintiffs

1 have been throwing so many arguments in the
2 stew, notice and time to seek a TRO is becoming
3 a bit confused.

4 So, as I understand it, there are
5 essentially three big problems we'll call them.
6 The first is the Verano problem, as we'll call
7 it. That arose earlier in the process. That
8 has been litigated. And, obviously, folks are
9 on notice of that very early on, relatively
10 speaking, in this process.

11 The second problem is the emergency rule,
12 shall we say. Folks were on notice of that in
13 October. And I will concede that Alabama
14 Always did seek a TRO vis-a-vis the ranking
15 procedure. However, they are the only ones to
16 do so. And I would note they were the only
17 ones to do so, despite the fact that, as we
18 discussed previously, an entire iteration of
19 that process occurred before the integrated
20 proceedings began.

21 But, more importantly, though, when it
22 comes to the throwing out of the third-party
23 scores, that was known in late November. No
24 one sought a TRO based on that happening. No
25 one sought to stop that from occurring until

1 after the fact. And I can't read anyone's
2 mind, but I have a sinking suspicion it was
3 because folks thought it would benefit them.

4 I take issue with one thing Mr. Jackson
5 said. It's not heads-I-win, tails-you-lose.
6 It's heads-I-win, tails-it's-illegal.

7 There can simply be no irreparable harm
8 when folks sit on their hands. And when you
9 parse out the timing of when notice occurred
10 for all the events that are being alleged at
11 issue here, there was plenty of notice and
12 plenty of opportunity to seek a TRO.

13 There was plenty of opportunity to object,
14 as we've seen today, for throwing out the USA
15 scores. That didn't happen until now because
16 it hasn't benefited folks. And fair enough to
17 litigate it.

18 But on the equities, there simply cannot
19 be a TRO, which is what we're deciding today,
20 as I understand it, based on that, based on
21 folks sitting on their hands, based on folks
22 hoping it would work out for them; and when it
23 didn't, running to court.

24 That's all I have.

25 MR. DUNGAN: Your Honor, may I respond

1 to that briefly. Patrick Dungan for Southeast
2 Cannabis Company this time.

3 I just want to make sure it's known to
4 Mr. Bloom, because I'm sure it's been quite a
5 heavy lift to go back and read nearly six
6 hundred document numbers worth of materials
7 that's been filed in this consolidated matter
8 over the last six-plus months, not to mention
9 all of the various other ancillary matters that
10 were filed and consolidated and intervenors,
11 but Southeast Cannabis Company has been here
12 since August 18th on behalf of the commission
13 hoping and begging and pleading the commission
14 to stand in here and defend itself, which it
15 never did until today.

16 Southeast Cannabis Company, on October
17 4th, filed a petition for writ of mandamus, a
18 cross-complaint for equitable and declaratory
19 relief. We asked this court to enjoin the
20 commission, A, from taking any action to void
21 or rescind or revoke the licenses that they
22 issued on August 10th.

23 We also asked this court to enjoin the
24 commission from adopting or imposing --
25 adopting or imposing any new rules that would

1 be retrospectively applied to this applicant
2 pool.

3 So we didn't sit on our hands. We saw
4 what they wanted to do. We didn't think they
5 should do it. We asked this Court to tell them
6 they couldn't do it. The Court said I think
7 it's premature. Let's just see what they're
8 going to do because you might win a third time,
9 no harm, no foul.

10 That's kind of been the theme of this
11 entire litigation is -- and that's -- as
12 Mr. Brom mentioned earlier, that's why we
13 weren't throwing TROs.

14 THE COURT: I don't think the timing
15 on the TRO is off. I think that was the
16 message that all of y'all had was to wait and
17 see. And I don't think that now.

18 And I may -- I'm looking at -- I think we
19 resolved the timing for the -- the other
20 licenses dealing with integrated licenses and
21 that's -- the 9th of January is the timing for
22 that to go take place.

23 Now, so, I want to -- and do you want to
24 add something else? I just --

25 MR. DUNGAN: Well, that was it. Other

1 than just also adding for the record that we --
2 Southeast Cannabis Company did also object on
3 the record to the mediation -- to the
4 settlement agreement.

5 THE COURT: What I see -- Mr. Green, I
6 asked you during the break to come up with who
7 all is asking for temporary restraining orders.

8 MR. GREEN: I --

9 THE COURT: Just make sure we have it.

10 MR. GREEN: Yes. Would you like me to
11 read it?

12 THE COURT: Read it on the record.

13 MR. GREEN: The ones that I have are,
14 my client, Jemmstone, which is document 2 in
15 CV-2023-901800. Southeast Cannabis is document
16 540 in the master case. Yellowhammer
17 Dispensaries is document 537 in the master
18 case. Pure by Sirmon Farms, LLC, is document
19 11 in 2023-901802. Yellowhammer Dispensaries
20 again, document 13 in 2023-901798; 3 Notch
21 Roots, LLC, document 3 in 2023-901801; Alabama
22 Always, document 40 in CV-2023-901727; Insa,
23 document 559 via intervention in the master
24 case; and Theratrue is document 520 in the
25 master case as well.

1 MR. BROM: Your Honor, can I ask a
2 basic procedural question? Theratrue -- we
3 filed our original action separately as a new
4 action. We then -- which is CV-2023-901653.
5 We then subsequently filed a motion to
6 consolidate with the Alabama Always master
7 case, 231.

8 Since that time, I have been filing solely
9 in the Alabama Always case and not in the
10 original case.

11 THE COURT: That was something we
12 realized today. And that's fine.

13 MR. BROM: Is that what you want us to
14 do?

15 THE COURT: Yes. I'm trying to get
16 everything consolidated into the master case so
17 that we can all identify the documents we're
18 talking about, so it's -- the commission has
19 got a meeting, right?

20 MR. WEBSTER: In thirty minutes.

21 THE COURT: I want to just kind of go
22 through something in my head. One, what we
23 call the Verano issue. Okay. It's -- and
24 somebody tell me if I'm wrong, but the law in
25 this case right now is that the commission can

1 do that. I know y'all want to say it's
2 different than the first time, than Verano's.

3 MR. DUNGAN: Well, Your Honor, I don't
4 believe that's the law in this case yet. I
5 don't believe there has been a ruling in this
6 case yet on that issue. Verano was separate
7 and --

8 THE COURT: The separate Verano case
9 but not in this case.

10 MR. DUNGAN: That's right.

11 MR. BROM: And it would be premature
12 at this time because no such filings addressing
13 that issue have occurred.

14 THE COURT: Okay. But what I'm
15 thinking out loud if I was to grant a temporary
16 restraining order to restrain the commission
17 from issuing licenses, I would have to make a
18 different decision in the master case than I
19 did in the Verano case.

20 And then I'm not sure if I'm going to wait
21 on the Court to say, well, you might get
22 reversed. I don't know if that's grounds
23 enough to say a likelihood to be successful on
24 appeal.

25 But I know y'all say you've got some other

1 issues you want to look at, so that's just my
2 thought on that for a TRO.

3 And then I think, okay, if today I grant a
4 temporary restraining order, it's only good for
5 ten days. We don't have anything that's going
6 to happen as far as the issuance of the license
7 until the 9th of January. So if I were to
8 issue an order today, it would expire before
9 that time.

10 I know that --

11 Yes, Mr. Somerville.

12 MR. SOMERVILLE: Your Honor, I think
13 the ten-day limitation is mandatory only when
14 the TRO is entered without notice to the other
15 side, by the rule.

16 THE COURT: But I also hear that
17 there's a possibility some discovery that might
18 lead to some clarifications of some issues.

19 And then we don't know what the commission
20 is going to do today about what they decide.
21 And is this -- is it purely administrative
22 about the 9th? Is it something that the
23 commission could say we're going to wait before
24 we issue licenses?

25 MR. JACKSON: I believe it's purely

1 administrative at this point.

2 MR. ADAY: It's based on the timing of
3 when they were awarded.

4 THE COURT: Nothing the commission --
5 unless they suspended --

6 MR. ADAY: Unless they stay the
7 issuance.

8 THE COURT: You know, and I don't know
9 if I were to stay if I would be early to issue
10 something today. I may see what the commission
11 does or doesn't do.

12 I'm just sharing with you my thoughts.

13 MR. DUNGAN: Judge, may I make a brief
14 comment about the dispensary category.

15 We don't really have time, unfortunately,
16 with a one o'clock meeting today and issuance
17 tomorrow.

18 THE COURT: Well, I understand that.
19 And I think on the dispensary, in my head, I've
20 already said I'll deny the TRO because I think
21 you've got an administrative remedy.

22 MR. DUNGAN: Even if all four licenses
23 issue?

24 THE COURT: Yes. No, I'm getting it
25 confused with the --

1 MR. DUNGAN: Cultivators.

2 THE COURT: -- the cultivators. The
3 cultivator. The dispensaries is the other one,
4 yes.

5 MR. DUNGAN: Okay.

6 THE COURT: So, really, that's
7 Tuesday?

8 MR. DUNGAN: It's tomorrow.

9 THE COURT: Oh, tomorrow.

10 All right. Well, I'm inclined to let the
11 commission meet and see what they say this
12 afternoon before I enter any kind of order one
13 way or the other. But you're dealing with a
14 24-hour -- we've got ten or twelve days on the
15 integrated licenses.

16 As far as this issue goes on the lawsuits
17 filed, what kind of expedited discovery over
18 the holidays would you want, Mr. Ragsdale?

19 MR. RAGSDALE: I'm tied up on New
20 Year's Day.

21 THE COURT: About four o'clock.

22 MR. RAGSDALE: Just for a religious
23 ceremony.

24 MR. FOX: And, hopefully, January 8th.

25 THE COURT: That evening. That

1 evening.

2 Well, Mr. Somerville has been wanting
3 discovery for two years.

4 MR. RAGSDALE: I know. But this is a
5 real request.

6 I mean, with the cooperation of the
7 commission, which I fully anticipate, I think
8 we could get that done in the next ten days.
9 Now, that's optimistic and probably
10 unrealistic, but, you know, that's the balance,
11 Judge, between whether they're going to insist
12 on going forward with issuing the licenses on
13 the 9th or do they want to give us a more
14 leisurely approach with discovery. But we'll
15 get it done with whatever time frame you give
16 us.

17 MR. GREEN: I can only speak for
18 myself. I'm spoken for January 2 through 4th
19 with an out-of-state court who will send people
20 after me if I don't show up.

21 MR. RAGSDALE: Which is not a bad
22 alternative.

23 MR. GREEN: Well, some people might
24 want that. I understand.

25 THE COURT: Mr. Jackson.

1 MR. JACKSON: Judge, we have not even
2 addressed the discovery.

3 THE COURT: I know. That's why I
4 brought it up.

5 MR. JACKSON: Yes. And it's in the
6 pleading, but it's in the pleading just in the
7 conclusory fashion that Barry stated it in open
8 court. We think there were some shenanigans
9 going on, so we're entitled to discovery.
10 There's no affidavits. There's no proof, just
11 conclusory, speculative -- conclusory
12 allegations. There's no factual support
13 whatsoever as to who were the participants,
14 what days they were, for us to even be able to
15 respond to it.

16 It's a classic fishing expedition of let
17 us do discovery to find out if there were
18 shenanigans going on, and we'll bring it up.

19 Some litigant in this courtroom -- maybe
20 not in public but during the proceedings said
21 that the allegations --

22 (Brief interruption)

23 MR. JACKSON: I said some litigant
24 here in this courtroom, perhaps not in public
25 and before Your Honor, has made the statement

1 that allegations of an OMA violation is a last
2 resort for losers.

3 Judge, our position is there needs to be a
4 heck of a lot more specificity pled before Your
5 Honor orders any kind of discovery whatsoever.
6 Right now, all we've got is, you know, we heard
7 it through the grapevine that a couple
8 commissioners may have met outside of the open
9 meeting, and that's a violation of the Open
10 Meetings Act, which it wouldn't be, but --

11 THE COURT: I don't have an Open
12 Meetings Act in front of me.

13 MR. JACKSON: Right.

14 The other thing I would say about that is
15 they did a horrible job at it, because you've
16 looked at these ranking sheets and the
17 disparity of the scores is all over everywhere,
18 so unless they were super-sophisticated, they
19 did a pretty poor job.

20 So, my point being, there's got to be a
21 lot more specificity pled before he's entitled
22 to do any discovery whatsoever.

23 MR. RAGSDALE: We will be happy to
24 supplement our request if that's helpful and
25 use the standard that Mr. Jackson is

1 suggesting. I don't think I have to prove the
2 facts in order to justify doing discovery to
3 try to prove the facts. But I can certainly
4 makes sufficient allegations.

5 I think, frankly, it's sufficient for me
6 to say as an officer of the court that we think
7 there is information that there was -- I don't
8 know if shenanigans -- but certainly hi jinks.

9 MR. BROM: Your Honor, I'll just say
10 this. I think, you know, for the integrated
11 facilities, I watched, you know, all four days
12 of the presentations and the vote. And I think
13 it's fair to say that when it came time for the
14 vote, when we're talking about millions of
15 dollars of application costs, only five
16 integrated facility licenses on something
17 that's brand new in two hundred years we've
18 never done that's been subject to lengthy
19 litigation in every other state it's been
20 tried, there was basically absolutely no
21 discussion or deliberation. The vote took a
22 matter of minutes. Next. Yea. Nay. No.
23 Yes. Okay. Next.

24 There was no deliberation. If there was
25 no deliberation on the record, where did it

1 occur?

2 I think that's a fair request to say we
3 need to know some information. How did you
4 vote, because you certainly didn't deliberate
5 in an open setting. You didn't do anything but
6 just call names and vote and move down the
7 list.

8 THE COURT: I think the Montgomery
9 question would be now that Tony's Pizza is
10 closed you don't know where it happened.

11 MR. MILLS: Judge, I just want to
12 point out it's not a violation of the Open
13 Meetings Act for some of these commissioners to
14 meet and discuss these things.

15 It's only a violation and improper
16 deliberation if they have enough to make a
17 quorum, okay, that's when it's a meeting.
18 That's when it's got to be in public.

19 Now, certainly, there are some provisions
20 that you didn't have serial meetings to avoid
21 the statute. But just because some
22 commissioners discussed this outside of a
23 meeting does not make this an Open Meetings Act
24 violation.

25 THE COURT: All right.

1 MR. BROM: Your Honor, I'll just say I
2 don't think that that's correct. I think that
3 any deliberation by the commissioners outside
4 the meeting is a definition of a violation.

5 THE COURT: Well, there are some
6 restrictions on that about what could
7 constitute a serial meeting.

8 All right. Here's what I'm going to do as
9 far as this afternoon goes. Let's see what the
10 commission does this afternoon about the
11 dispensary licenses.

12 We've got before -- January 9th before any
13 other integrated license can be issued.

14 What I'd like is a proposed order from the
15 folks that are asking for TROs and a proposed
16 order from the commission; and, specifically,
17 one having to do with the dispensaries by --
18 depending on what the commission does. And
19 then I'll look at the integrated license folks.

20 And if there's anybody that wants to amend
21 anything and ask for discovery, I'll see about
22 that.

23 I'm still going back to what I call the --
24 y'all need to put something -- we need to have
25 a hearing on what I'm calling the Verano issue,

1 saying it's distinctive, you know. I'm still
2 inclined right now to say that they can.

3 MR. BROM: Your Honor, Mr. Webster had
4 asked -- and I'm not sure of the deadline at
5 this point. I filed an amended
6 complaint/petition. Mr. Webster asked me the
7 other day, he said, we've got all these
8 filings. You just filed an amendment, can we
9 have some time. I'm not sure what the date is
10 now.

11 Do you know off the top of your head?

12 MR. WEBSTER: I think I asked you for
13 two weeks. I think that's what I asked you
14 for.

15 THE COURT: Yes, that issue needs to
16 be resolved.

17 MR. WEBSTER: And I asked that for you
18 as well.

19 MR. DUNGAN: Right. And --

20 THE COURT: Thinking out loud, if
21 that's -- you know, if the Court -- I don't
22 know if I can -- if I'm going to take into
23 consideration that I might get reversed -- I
24 mean that happens every time, you know.
25 Everybody has a right to question that -- so I

1 don't know if that's -- unless there's
2 something different and new, I'll wait on the
3 folks on Dexter Avenue to tell me.

4 MR. DUNGAN: Yes. And I think, just
5 quickly, so we're clear, there have been, I
6 think, two additional complaints/petition for
7 review filed with these exact same claims,
8 exact same issues and there's potentially a
9 third coming within the next week. But it's --
10 again, it's all the same legal arguments and
11 same factual, so I don't believe it would tax
12 the commission's lawyers that much. I think
13 they'll most likely be able to file a single
14 responsive pleading to them all and let us come
15 down here and have our Pow wow and shoot it up
16 however you want, sooner, rather than later, if
17 possible.

18 MR. WEBSTER: Just to clarify, I asked
19 for us to be allowed -- the time provided to
20 file the amended complaint is ten days --
21 business days -- so it would actually be
22 fifteen days from yesterday.

23 THE COURT: And I think that's
24 reasonable, Mr. Webster.

25 MR. WEBSTER: Thank you.

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THE COURT: But that's an issue that I'm sure y'all can report to the commission they can -- if that has anything to do with the actions they take and not take and see.

Okay. Anything else I need to mess up right now?

MR. RAGSDALE: You've done enough.

THE COURT: Thank you. Thank you for everybody being so patient.

(Court adjourned)

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CERTIFICATE

STATE OF ALABAMA

COUNTY OF MONTGOMERY

I, Mary R. King, Official Court Reporter and Registered Merit Reporter for the 15th Judicial Circuit for the State of Alabama, Montgomery, Alabama, do hereby certify that I reported in machine shorthand the foregoing proceedings as stated in the caption hereof; that my shorthand notes were later transcribed by me or under my supervision, and that the foregoing pages contain a full, true and correct transcript of said proceedings and testimony set out herein; that I am neither kin nor of counsel to any parties in this proceeding, nor in any way interested in the results thereof.

Dated the 30th day of December, 2023.

/s/ MARY R. KING, CCR, RMR
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EXHIBIT B

In The Matter Of:

Alabama Medical Cannabis Commission Meeting

AMCC Meeting - (12-28-23)

December 28, 2023

Bain & Associates Court Reporting Services, Inc.

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<p>1 ALABAMA MEDICAL CANNABIS COMMISSION 2 MEETING 3 4 The above-entitled matter came to be 5 heard on the 28th day of December, 2023, via 6 videoconference and commencing at 1:02 p.m. CST. 7 8 COMMISSION MEMBERS PRESENT: REX VAUGHN (chair), 9 DR. SAM BLAKEMORE, DWIGHT GAMBLE, DR. JIMMIE 10 HARVEY, JAMES HARWELL, TAYLOR HATCHETT, DR. ERIC 11 JENSEN, JUDGE CHARLES PRICE, DION ROBINSON, 12 DR. WILLIAM SALISKI, JR., LOREE SKELTON, 13 DR. JERZY SZAFIARSKI 14 15 ALABAMA MEDICAL CANNABIS COMMISSION STAFF 16 MEMBERS: SCOTT ABSHER (Compliance Director), 17 JOHN McMILLAN (Director), BRITTANY PETERS 18 (Communications) 19 20 Transcript prepared by: Jason Kobielus, RPR, 21 Alabama CCR 22 23 *** 24 25</p> <p style="text-align: right;">Page 1</p>	<p>1 P R O C E E D I N G S 2 MR. VAUGHN: So, Commission members, 3 if you don't mind, we're -- we're kind of having 4 a delayed meeting -- because of the Court 5 conflict of time. And we're waiting for our 6 legal team to get back -- back to the office so 7 they can share with us kind of what has 8 transpired today. 9 So I'll tell you what: I'll go ahead 10 and have an invocation, and then we'll have the 11 roll call. If you all don't mind, bow with me. 12 Father in heaven, we thank you so much 13 for another day of life. We thank you for 14 watching over us, for just giving us a blessed 15 living in -- in America. 16 We thank you for the opportunity to 17 give something to an industry that we hope one 18 day will benefit all Alabamians and those 19 particularly who are sick and ill. We just thank 20 you for the opportunity to try to move this 21 program forward and just pray for direction 22 and -- each and every way -- in Christ's name. 23 Amen. 24 Okay. John, if you don't mind, go 25 ahead and have a roll call, please, sir.</p> <p style="text-align: right;">Page 3</p>
<p>1 A P P E A R A N C E S 2 3 ON BEHALF OF THE ALABAMA MEDICAL CANNABIS 4 COMMISSION: 5 JUSTIN C. ADAY 6 General Counsel 7 Alabama Medical Cannabis Commission 8 445 Dexter Avenue 9 Suite 8040 10 Montgomery, Alabama 36104-3864 11 12 *** 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: right;">Page 2</p>	<p>1 MR. McMILLAN: Okay. Chairman Vaughn? 2 MR. VAUGHN: Here. 3 MR. McMILLAN: Dr. Saliski? 4 DR. SALISKI: Present. 5 MR. McMILLAN: Dr. Blakemore? 6 DR. BLAKEMORE: Present. 7 MR. McMILLAN: Mr. Gamble? 8 MR. GAMBLE: Here. 9 MR. McMILLAN: Dr. Martin? 10 Dr. Jensen? 11 DR. JENSEN: Here. 12 MR. McMILLAN: Ms. Skelton? 13 MS. SKELTON: Here. 14 MR. McMILLAN: Judge Price? 15 Ms. Hatchett? 16 MS. HATCHETT: Here. 17 MR. McMILLAN: Mr. Harwell? 18 MR. HARWELL: Here. 19 MR. McMILLAN: Dr. Szaflarski? 20 DR. SZAFIARSKI: Present. 21 MR. McMILLAN: Dr. Harvey? 22 DR. HARVEY: Here. 23 MR. McMILLAN: Mr. Robinson? 24 Well, that is a good, solid quorum, 25 Mr. Chairman.</p> <p style="text-align: right;">Page 4</p>

<p>1 MR. VAUGHN: Thank you, John. It is a 2 solid quorum, and thank all of you for 3 participating today. 4 I hate to do this to you, but due to 5 what we've kind of seen -- didn't see this coming 6 today, but the -- the overrun of the Court 7 hearing has kind of conflicted with our time 8 frame. 9 So, if all of you don't mind, we're 10 going to go into a recess until 2:00 o'clock. So 11 go back to the same Zoom link that you just used 12 to come on this meeting, and we'll -- we'll re- 13 -- come back into the meeting at 2:00 o'clock. 14 So just stay tuned, and bear with us. Thank you. 15 (A break was taken.) 16 MR. VAUGHN: It is 2:02; so I'll go 17 ahead and ask Mr. McMillan to have another roll 18 call -- roll call. 19 So, John, proceed. 20 MR. McMILLAN: Okay. Chairman Vaughn? 21 MR. VAUGHN: Here. 22 MR. McMILLAN: Dr. Blakemore? 23 DR. BLAKEMORE: Present. 24 MR. McMILLAN: Dr. Saliski? 25 Mr. Gamble?</p> <p style="text-align: right;">Page 5</p>	<p>1 I think it would be in order to 2 approve all six at one time. So we can do that, 3 I believe, unless a Commission member has a 4 problem with that. I'll move forward with that 5 assumption. 6 Is there a motion to approve all the 7 minutes from December 1st, December 5th, December 8 6th, December 7, December 8, and December 12th 9 and approve all at one time as printed? 10 MR. HARWELL: So moved. 11 DR. JENSEN: Second. 12 MR. VAUGHN: We've got a motion from 13 Mr. Harwell. Who was the second? 14 DR. JENSEN: Eric. 15 MR. VAUGHN: Thank you, Dr. Jensen. 16 Motion and a second -- is there any other 17 discussion on that motion to approve all the 18 minutes at one time? 19 If not, I'll have Mr. McMillan have 20 another roll call vote. 21 MR. McMILLAN: Chairman Vaughn? 22 MR. VAUGHN: Yes. 23 MR. McMILLAN: Dr. Blakemore? 24 DR. BLAKEMORE: Yes. 25 MR. VAUGHN: Dr. Saliski?</p> <p style="text-align: right;">Page 7</p>
<p>1 MR. GAMBLE: Here. 2 MR. McMILLAN: Dr. Martin? 3 Dr. Jensen? 4 DR. JENSEN: Here. 5 MR. McMILLAN: Ms. Skelton? 6 MS. SKELTON: Here. 7 MR. McMILLAN: Judge Price? 8 Ms. Hatchett? 9 Mr. Harwell? 10 MR. HARWELL: Here. 11 MR. McMILLAN: Dr. Szaflarski? 12 DR. SZ AFLARSKI: Present. 13 MR. McMILLAN: Dr. Harvey? 14 DR. HARVEY: Here. 15 MR. McMILLAN: Mr. Robinson? 16 We have a quorum, Mr. Chairman. 17 MR. VAUGHN: Thank you, John. Maybe 18 some of these other individuals will join us 19 momentarily. 20 Before we move into any kind of items, 21 we do have -- on the agenda, we've got six 22 different meeting minutes we need to approve. I 23 hope all of you -- you Commission members have 24 seen those on your -- on your e-mail. Ms. Peters 25 sent them out last week.</p> <p style="text-align: right;">Page 6</p>	<p>1 Mr. Gamble? 2 MR. GAMBLE: Yes. 3 MR. McMILLAN: Dr. Martin? 4 Dr. Jensen? 5 DR. JENSEN: Yes. 6 MR. McMILLAN: Ms. Skelton? 7 MS. SKELTON: I believe I would need 8 to abstain since I was not able to attend those 9 meetings. 10 MR. McMILLAN: Okay. Judge Price? 11 Ms. Hatchett? 12 Mr. Harwell? 13 MR. HARWELL: Yes. 14 MR. McMILLAN: Dr. Szaflarski? 15 DR. SZ AFLARSKI: Yes. 16 MR. McMILLAN: Dr. Harvey? 17 DR. HARVEY: Yes. 18 MR. McMILLAN: Mr. Robinson? 19 MS. PETERS: -- doesn't vote. 20 MR. McMILLAN: Huh? 21 MS. PETERS: Mr. Robinson does not 22 vote. 23 MR. McMILLAN: Right. The motion 24 passes, Mr. Chairman. 25 MR. VAUGHN: Okay. Thank you, John.</p> <p style="text-align: right;">Page 8</p>

<p>1 Thank you all for -- to all that. 2 Before we move any further with 3 Mr. Absher to discuss compliance update, I'm 4 going to ask Mr. Justin Aday to discuss what 5 occurred in the courtroom today and what he is 6 able to discuss with our Commission. 7 So, Justin, you got the floor. 8 MR. ADAY: Thank you, Mr. Chairman. 9 Just a -- a brief legal update, which is mostly 10 surrounding the proceedings this morning -- over 11 the past couple of days, there were a number of 12 parties who have filed various actions in the 13 Montgomery County Circuit Court. 14 So many of those were seeking a 15 temporary restraining order from the Court as to 16 the issuance of licenses that were awarded by the 17 Commission either on December 1st or December 18 12th. The Court heard extensive oral arguments 19 today from those who filed those actions as well 20 as counsel for the Commission and counsel for 21 some parties who have intervened on behalf of the 22 Commission. 23 And, after hearing that argument, the 24 Court did not take any specific action today. 25 And the Court said that -- that the Commission</p> <p style="text-align: right;">Page 9</p>	<p>1 So, Scott, give us an update on what 2 all you've seen so far. 3 MR. ABSHER: Thank you, Mr. Chairman. 4 In the last week and a half, I've been able to 5 visit approximately 31 of our future sites. They 6 were from Grand Bay all the way to Athens, so 7 from one end of the state to the other. 8 I would like, also, to thank the 9 Commission members that were able to attend some 10 of the inspections with me. 11 That was very appreciative not only by 12 myself but by the awardees, that it shows the 13 dedication of the Commission to the process per 14 the -- the on-site inspection process that was 15 dictated by statute, which is 20-2A-53, Section 16 A, Subsection 4, establishing an on-site 17 inspection process to be conducted at each 18 facility of an applicant prior to being issued a 19 license as well as ongoing site inspection inside 20 the facility of a licensee. 21 What I did in this process was 22 basically visit these folks, see what they 23 already had in place, what their future plans 24 were, what kind of time lines we're looking at. 25 And I can happily report to the</p> <p style="text-align: right;">Page 11</p>
<p>1 would, you know, be able to move forward in this 2 meeting and conduct the business that it has 3 before it today. 4 Certainly, there are proceedings that 5 will be ongoing with these matters. And the 6 Court could entertain, you know, requests that 7 have been made for temporary restraining orders 8 and injunctions and those types of things but 9 nothing -- nothing restraining the Commission 10 from its meeting today or the agenda that it has 11 before it. 12 MR. VAUGHN: Okay. Thank you, Justin. 13 Does any Commission member have a question or 14 comment for Justin pertaining to today's Court 15 hearing? 16 And please understand that, right now, 17 we're -- have a lot of open-ended questions that 18 have not been addressed yet. So anybody want to 19 talk to Justin about that? 20 Hearing none, I guess we'll move on to 21 Item Number 6 with a compliance update from 22 Mr. Scott Absher. Scott has been covering the 23 state, crisscrossing here lately trying to see 24 what our entities are looking like as far as 25 facilities are going.</p> <p style="text-align: right;">Page 10</p>	<p>1 commissioners that everybody is on track. 2 They're simply awaiting their licenses. Some of 3 them are awaiting their license in order to get 4 their billing permits from the cities or 5 municipalities that their facilities are residing 6 in, but everybody seems to be well on their way 7 to getting a viable industry up and running. 8 I do not perceive, at this time, 9 anyone failing to meet those requirements. But 10 we still would have our pre-commencement 11 inspection to conduct, which with our 12 cultivators, as you know, would be within 60 days 13 of the issuance of their licenses. They must 14 show the ability to start production; so that is 15 the next milestone for them. 16 I will be spending the rest of this 17 afternoon and tomorrow mapping out the last of 18 the integrators. I was able to do one integrator 19 this past week, but I will do the other four 20 starting next week, probably on the 2nd. 21 As I did before, I will send you a 22 grid calendar with where and when along with the 23 information sheets that I prepared and sent out 24 to them so that all the commissioners will know 25 where we'll be at and when we'll be there.</p> <p style="text-align: right;">Page 12</p>

1 And, at this time, if anyone has got
 2 any questions, I'll be more than happy to try to
 3 answer.

4 MR. VAUGHN: I got a question, Scott.
 5 Have you made any progress, or -- I know you
 6 probably have some identified. Have you gone as
 7 far as hiring investigators, inspectors, or
 8 auditors at this point?

9 MR. ABSHER: Yes, sir, we have. We've
 10 conducted interviews, and we are ready to pull
 11 the trigger. Once again, we're waiting for
 12 licenses. Just like the awardees, we're waiting
 13 for licenses to issue so we have something for
 14 these folks to do.

15 Myself, Brittany, and Daniel Autrey --
 16 we interviewed 10, 12 potential applicants, and
 17 we've narrowed it down to a handful. And once we
 18 get the program up, and -- steam behind it, we'll
 19 be pulling the trigger on getting some additional
 20 inspectors in here to begin with and then build
 21 out from there.

22 MR. VAUGHN: Okay. Thank you, Scott.
 23 Does anyone on the Commission have a question for
 24 Scott before we move on?

25 Hearing none, we'll move on to a Page 13

1 couple of decision items. And the first one is
 2 to authorize our director, Mr. John McMillan, to
 3 engage a hearing officer.

4 Some of you may not know exactly what
 5 that would entail; so I'm going to ask Justin to
 6 address that briefly. Justin.

7 MR. ADAY: All right, Mr. Chairman.
 8 So, as you are aware, the statute and the rules
 9 provide for those applicants who were denied a --
 10 a license to request an investigative hearing.
 11 And we have had a number of applicants who have
 12 done so, and those hearings will be conducted by
 13 a hearing officer.

14 And statute -- hearing officer being
 15 involved in that process. And the hearing
 16 officer will be responsible for the -- the
 17 conduct of those proceedings and how various
 18 parties to those proceedings operate within the
 19 proceedings in accordance with the Administrative
 20 Procedure Act.

21 And so what we need to do at this
 22 juncture so is to get that hearing officer in
 23 place. We have the docket of those who have
 24 requested hearings.

25 And then that hearing officer will Page 14

1 proceed on going through that process; providing
 2 records of notice to those parties who were
 3 involved as to how they will proceed, how the
 4 hearings will be scheduled and conducted, and --
 5 and how various parties can do things that they
 6 have the right to do under the Administrative
 7 Procedures Act, intervening in the cases and, you
 8 know, filing various pleadings and -- and taking
 9 testimony and cross-examining, those types of
 10 things that are -- are the basic requirements of
 11 the Administrative Procedures Act.

12 MR. VAUGHN: Thank you, Justin. We do
 13 have 26, I believe, total entities who have
 14 timely requested an investigative hearing; so
 15 there is a lot of work in front of that
 16 individual and -- and your staff.

17 So does anyone have a question for
 18 Justin pertaining to the hearing officer?

19 MS. SKELTON: Mr. Chairman, this is
 20 Loree. I have a question.

21 MR. VAUGHN: Yes, ma'am. Go ahead,
 22 Loree.

23 MS. SKELTON: Thank you. What is the
 24 criteria that will be utilized to make that
 25 determination of the selection of the hearing Page 15

1 officer? Are you only planning on engaging one,
 2 and what pool would you be drawing from?

3 MR. VAUGHN: You want to address that,
 4 Justin?

5 MR. ADAY: Yeah. I think that, you
 6 know, as to how many, I think that that would be,
 7 you know, probably something that we're going to
 8 have to determine once we, you know, have some
 9 conversations in -- in terms of, you know, what
 10 this caseload is going to look like and -- and
 11 who may be able to handle the cases or -- or, if
 12 they do need to be split up, to have multiple
 13 hearing officers.

14 In terms of, you know, who -- who they
 15 will be, I mean, we -- we don't know at this
 16 point. And we're certainly going to, you know,
 17 look at, you know, what other agencies have done
 18 with respect to individuals who are -- who have
 19 served in that capacity before, those agencies
 20 that don't have a permanent one.

21 You know, and what that, you know,
 22 relationship, what that agreement will look like
 23 as far as, you know, whether it is someone online
 24 or someone that -- that is directed, you know, to
 25 us -- that that is, you know, something that we Page 16

<p>1 will have to determine as we start having those 2 conversations with them.</p> <p>3 MS. SKELTON: So do you have a list of 4 criteria or qualifications that you'll be looking 5 for specifically for this hearing officer or 6 hearing officers?</p> <p>7 MR. ADAY: Yeah. We don't have a list 8 at this moment.</p> <p>9 But, you know, certainly, we would 10 look at what their history has been, you know, 11 serving in that capacity as a hearing officer, 12 you know, within -- you know, within the -- the 13 confines of the Administrative Procedures Act; 14 and -- and then, you know, what their current 15 obligations are as far as what kind of caseload 16 that they could handle going, you know, forward 17 with us; looking at what the time line would be 18 for us, you know, for -- for moving, you know, 19 cases -- you know, moving that are -- that have 20 been requested hearings that have been requested 21 here.</p> <p>22 MS. SKELTON: Okay. If we can help, 23 I --</p> <p>24 MR. ADAY: Yeah --</p> <p>25 MS. SKELTON: -- I would be happy to</p> <p style="text-align: right;">Page 17</p>	<p>1 MR. VAUGHN: Who was that?</p> <p>2 MR. GAMBLE: Dwight.</p> <p>3 MR. VAUGHN: Thank you, Dwight, 4 Mr. Gamble, with the second. Any other 5 discussion on the -- on Mr. McMillan hiring a 6 hearing officer for the investigative hearings?</p> <p>7 All in favor of that motion, say aye.</p> <p>8 UNIDENTIFIED SPEAKER: We'll need to 9 do roll call.</p> <p>10 MR. VAUGHN: We need to have a roll 11 call. I'm sorry about that.</p> <p>12 Go ahead, Mr. McMillan, with the roll 13 call vote. Indicate your support of the motion 14 with a yes and an opposition with a no.</p> <p>15 MR. McMILLAN: Chairman Vaughn?</p> <p>16 MR. VAUGHN: Yes.</p> <p>17 MR. McMILLAN: Dr. Blakemore?</p> <p>18 DR. BLAKEMORE: Yes.</p> <p>19 MR. McMILLAN: Dr. Saliski? 20 Mr. Gamble?</p> <p>21 MR. GAMBLE: Yes.</p> <p>22 MR. McMILLAN: Dr. Martin? 23 Dr. Jensen?</p> <p>24 DR. JENSEN: Yes.</p> <p>25 MR. McMILLAN: Ms. Skelton?</p> <p style="text-align: right;">Page 19</p>
<p>1 -- to send in some qualifications that I think 2 would be extremely important. This is, 3 obviously, going to be a very important 4 appointment, whoever is chosen to serve in this 5 position.</p> <p>6 MR. ADAY: Yeah. We would certainly 7 welcome your input on that.</p> <p>8 MS. SKELTON: Okay. Thank you.</p> <p>9 MR. VAUGHN: Thank you, Loree.</p> <p>10 Excellent question -- and you're right: The 11 caseload, as Justin mentioned, is going to be 12 heavy with 12 integrators, six dispensaries, four 13 cultivators, three processors, and a secure 14 transporter all requesting an investigative 15 hearing; so it will be lengthy.</p> <p>16 Anyone else have a question for Justin 17 pertaining to that before we entertain a motion?</p> <p>18 And I'll entertain a motion to 19 authorize our director, John McMillan, to engage 20 a hearing officer. Do I have a motion?</p> <p>21 MR. HARWELL: So moved. This is 22 James.</p> <p>23 MR. VAUGHN: Got a motion, 24 Mr. Harwell. Is there a second?</p> <p>25 MR. GAMBLE: Second.</p> <p style="text-align: right;">Page 18</p>	<p>1 MS. SKELTON: Yes.</p> <p>2 MR. McMILLAN: Judge Price?</p> <p>3 JUDGE PRICE: Yes.</p> <p>4 MR. McMILLAN: Ms. Hatchett --</p> <p>5 MS. HATCHETT: Yes.</p> <p>6 MR. McMILLAN: Thanks, Judge. I'm 7 sorry.</p> <p>8 JUDGE PRICE: Yes.</p> <p>9 MR. McMILLAN: Ms. Hatchett?</p> <p>10 Mr. Harwell --</p> <p>11 MS. HATCHETT: Yes.</p> <p>12 MR. HARWELL: Yes.</p> <p>13 MR. McMILLAN: Dr. Szaflarski?</p> <p>14 DR. SZAFIARSKI: Yes.</p> <p>15 MR. HARWELL: Dr. Harvey?</p> <p>16 DR. HARVEY: Yes.</p> <p>17 MR. McMILLAN: Okay. Motion carries, 18 Mr. Chair.</p> <p>19 MR. VAUGHN: Thank you, John. 20 Brittany, I think -- I'm not sure if you heard: 21 I believe Ms. Hatchett got online, and she voted 22 yes.</p> <p>23 MS. PETERS: Yes. I have that.</p> <p>24 MR. VAUGHN: Okay. Okay. Let's move 25 on to our second decision item, which was</p> <p style="text-align: right;">Page 20</p>

<p>1 consideration of the items related to the 2 investigative hearing.</p> <p>3 And we've heard a lot of talk about 4 the Court hearings today. And I don't know what 5 may -- may be finishing, but I'm going to ask 6 Justin to kind of explain what we have the option 7 of doing today and if you all want to consider 8 doing anything.</p> <p>9 But, Justin, briefly explain kind of 10 what this option could be.</p> <p>11 MR. ADAY: Yes, sir. And, you know, 12 that now that we have requests for an 13 investigative hearing, we have -- we're operating 14 in the context specifically of Rule 538-X-3-.18, 15 which provides the opportunity for -- of 16 applicants to request investigative hearings.</p> <p>17 We have received those requests. The 18 period for applicants to make those requests has 19 closed as to all categories.</p> <p>20 And so, you know, one thing that is, 21 you know, contained within that rule is -- in 22 addition to making the request, is that in that 23 context of having pending requests for 24 investigative -- investigative hearings, the 25 Commission has the discretion to impose a stay on Page 21</p>	<p>1 decides to impose a stay on the issuance of any 2 licenses, whether it be some, all, by category, 3 whatever you choose to do within the realm of 4 license awards that you have due to the -- of 5 hearings -- so that is the context that we're in 6 with respect to this stay that would be 7 considered -- the rule says that any such stay 8 will remain in effect until the time for appeal 9 has lapsed or all appeals for the Commission's 10 decision have been resolved, whichever is later.</p> <p>11 And so just, you know, laying out the 12 implications for you, if -- if you issue a stay, 13 any stay, then that stay will remain in effect 14 until all the investigative hearing process has 15 concluded.</p> <p>16 And if anyone takes an appeal to 17 court, until that appeal plays out, all stays 18 will remain in effect until that has played out 19 completely. So you don't have the flexibility or 20 the authority to enter a stay and then to 21 subsequently lift that stay while hearings or 22 appeals are pending. The rule dictates that the 23 stay remains in place until the end.</p> <p>24 Obviously, parties have requested 25 stays from the Court. The Court has considered Page 23</p>
<p>1 the issuance of some or all licenses pending the 2 outcome of those investigative hearings.</p> <p>3 There was talk about that in the court 4 today. And I will tell you what we represented 5 to the Court, which is the position that we have 6 maintained throughout this.</p> <p>7 And the position that I will maintain 8 in explaining this to you today is that we are 9 not -- staff, legal team, we're not making a 10 recommendation to you on whether or not to impose 11 a stay on the issuance of some or all licenses. 12 What we are doing is explaining to you what the 13 options are available to you and what the 14 implications are of those options that you have 15 and -- and that discretion that you have.</p> <p>16 So, you know, we're not making a 17 recommendation. We have represented to the Court 18 that no recommendation has been made or -- or 19 will be made, and -- and so I want to be very 20 clear about that.</p> <p>21 According to the rule and -- and the 22 thing that I think, you know, that -- that you 23 need to be aware of, in addition to the fact that 24 you have the discretion to impose a stay or 25 not -- according to the rule, if the Commission Page 22</p>	<p>1 that and -- and continues to take that into 2 consideration. And there may be, you know, 3 subsequent requests for a stay from the Court, 4 depending on what the Commission's actions are 5 today with respect to it issuing any stay.</p> <p>6 And if the Court enters a stay, then, 7 obviously, we would abide by the orders of the 8 Court. And those stays could be for all licenses 9 in a particular category. It could be for all 10 licenses across the board. It could be for, you 11 know, individual licenses within a category.</p> <p>12 And, certainly, the Court would have 13 the ability to craft such a stay as it sees fit. 14 The Court would have the ability to lift all or 15 parts of any stay that they impose, even as the 16 process for hearings and appeals is going 17 forward, and so a -- a little bit of difference 18 in -- in terms of the -- the timing effect of a 19 stay imposed by the Commission versus a stay 20 imposed by the Court.</p> <p>21 You know, I'll be happy to try to 22 answer any questions that you may have on that. 23 But, once again, we're not recommending a 24 particular course of action: just trying to make 25 sure that -- that you have an understanding of -- Page 24</p>

1 of the rules and -- and the circumstances that we
2 found ourself in as you consider, you know, this
3 and how it impacts the investigative hearings and
4 -- and the issuance of licenses.
5 MR. VAUGHN: Okay. Thank you so much,
6 Justin. That is a lengthy explanation, very -- a
7 great explanation as well.
8 Does any Commission member have a
9 question before we move forward with the
10 consideration of an item --
11 DR. BLAKEMORE: Hey, Justin?
12 MR. ADAY: Yes.
13 DR. BLAKEMORE: Is it possible that we
14 -- we can make a motion essentially stating that
15 we should not have a stay and that these awards
16 should be issued by the Commission?
17 MR. VAUGHN: Exactly.
18 MR. ADAY: I think it would be in
19 order for you to -- you know, to make a motion
20 and then to have the Commission, you know,
21 consider it, debate it if there is any debate,
22 and -- and move forward, you know, in whichever
23 regard.
24 You know, just depending on how you
25 frame your motion, we would make sure that the

1 Commission understands what the motion is and --
2 and, you know, what the -- what the yea or nay
3 vote would mean for them and what the
4 implications of it would be.
5 DR. BLAKEMORE: Yeah, you know, it is
6 just I feel like, at this point, we've done --
7 we've done everything that we can as a commission
8 and that, really, you know, we should let the
9 courts handle this at this point. That is just
10 my opinion: that we should just move forward,
11 that we should not issue a stay.
12 You know, personally, I feel like
13 we've followed Judge Anderson's rules and
14 regulations in -- in the meetings that we
15 conducted; so it would be -- it would be great if
16 we could show -- you know, establish with the
17 motion that, hey, we try -- we did what you told
18 us to do. We would like to move forward with
19 these people, you know, the slate of awards that
20 we've -- we've had in the month of December, and
21 just get this show on the road so that people can
22 get their medicine.
23 MR. GAMBLE: I agree with you, Sam.
24 This is Dwight, and I agree.
25 MR. VAUGHN: I believe, Dr. Blakemore,

1 that that type of motion would be in order, if
2 you want to make a formal motion to that effect.
3 DR. BLAKEMORE: So I would like to
4 make a motion that we should not stay the awards
5 and that we should move forward with the process
6 and leave this up to the courts.
7 MR. VAUGHN: Thank you, Dr. Blakemore.
8 Is there a second?
9 MR. GAMBLE: I second the motion.
10 Dwight Gamble.
11 MR. VAUGHN: I got a motion from
12 Mr. Gamble to second that motion. Is there any
13 other discussion from Commission members?
14 Hearing none --
15 DR. JENSEN: Well, this is Eric
16 Jensen.
17 MR. VAUGHN: Go ahead, Dr. Jensen.
18 DR. JENSEN: So if we don't issue
19 stays, we just go along like we hoped to do all
20 along? And then if the Court decides to stay,
21 that is what we're going to wait on?
22 MR. VAUGHN: Well, that is exactly
23 right. The motion is the Commission will not
24 implement a stay on our actions thus far and we
25 will move forward as a commission on what we

1 agreed to do on December the 1st and December the
2 12th for those awarded licenses. That is what
3 that motion will consist of.
4 DR. SZAFIARSKI: This is Jerzy. Quick
5 question -- does that mean that we are approving
6 and issuing the licenses -- I'm sorry -- issuing
7 the licenses we approved among those two days?
8 Is the vote to issue the licenses?
9 MR. ADAY: And I'll provide and surely
10 include this: So the -- the rules provide that,
11 once the licenses are awarded, applicants who are
12 awarded have a license have 14 days in which to
13 pay their license fee.
14 All of those license fees have been
15 paid; so they have 14 days from the date the
16 license was awarded to pay their license fee.
17 And then 14 days from that date or 28
18 days from the date that the license is awarded,
19 the license is issued; so -- so there is no --
20 there is no action of the Commission -- other
21 than awarding the license, there is no further
22 action of the Commission that is required in
23 order for the licenses to issue. The only thing
24 is that if the Commission intervenes and issues a
25 stay, then they would not issue as scheduled.

1 The licenses will issue 28 days from
 2 the day that they were awarded unless the
 3 Commission or the Court enters a stay on the
 4 issuance of those licenses on those specific
 5 dates.
 6 JUDGE PRICE: This is Judge Price. So
 7 I understand Dr. Blakemore's motion.
 8 But from you explaining the rules,
 9 there is no action for us to take. I mean, we've
 10 already had 28 days, and we don't have to rule on
 11 whether or not we should stay. Just let the
 12 process work out itself, right?
 13 MR. ADAY: Yeah, so a couple of
 14 things -- with respect to all of the categories
 15 except for the integrated facilities, the 28th
 16 day from the date of award will be tomorrow. For
 17 the integrated facilities, the 28th day will be
 18 January 9th, so -- just so that you have those
 19 dates in mind.
 20 I don't disagree with you, Judge
 21 Price, in -- in the sense that those licenses are
 22 going to issue. But the only thing that would
 23 stop them from issuing is a stay.
 24 JUDGE PRICE: Right.
 25 MR. ADAY: That doesn't mean that the
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1 Commission has to affirmatively not issue a stay
 2 as --
 3 JUDGE PRICE: Absolutely.
 4 MR. ADAY: -- as Mr. Blakemore has
 5 moved. But if it doesn't issue a stay, then --
 6 then they would issue.
 7 JUDGE PRICE: Absolutely. So there is
 8 no -- there is no need for a motion stating that
 9 we refused -- denied a stay because the issue --
 10 the licenses go into effect if we take no action
 11 based on the rule, right?
 12 MR. VAUGHN: The motion simply is the
 13 Commission is not going to impose a -- a stay
 14 itself. That is what the motion is.
 15 JUDGE PRICE: There is no need for
 16 that motion because the rule says that if we let
 17 the process run out after the 28 days, the
 18 license will go into effect.
 19 DR. JENSEN: Right. But will this
 20 just let the judge in the -- presiding in the
 21 case know immediately where we stand just in case
 22 he decides to make stays?
 23 MR. VAUGHN: Exactly, Dr. Jensen.
 24 That is what this motion does. It, in effect,
 25 makes a declaration that the Commission is not
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1 going to impose a stay. If a stay is imposed, it
 2 will be on the part of the Court.
 3 JUDGE PRICE: Well --
 4 DR. JENSEN: And one other comment --
 5 the licenses aren't automatically issued unless
 6 they pass the inspection, correct?
 7 MR. VAUGHN: Exactly.
 8 DR. JENSEN: Okay. So it is not
 9 necessarily a done deal for everybody, but --
 10 yeah.
 11 MR. ADAY: The rules require a -- a
 12 pre-issuance inspection. And the rules require,
 13 in addition to paying the license fee, that --
 14 that any other obstacles to the license being
 15 issued are cleared. And, you know, we would
 16 certainly see the -- you know, the pre-issuance
 17 inspection being one of those obstacles.
 18 MR. VAUGHN: I believe, Justin, you
 19 could help me with this, but I believe this
 20 motion really makes the statement that the
 21 Commission is not going to stop the process where
 22 we are right now.
 23 MR. ADAY: As I understand the motion,
 24 it is a motion that the Commission not enter any
 25 stay in the investigative hearings.
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1 MR. VAUGHN: Yes. It basically means
 2 we are moving forward and the only stay that may
 3 stop us or could derail anything would be a stay
 4 from the Court. The Commission is making a
 5 declaration that it is not going to impose a stay
 6 at this point.
 7 DR. JENSEN: Right. And Judge Price
 8 is correct that we don't really need to do
 9 anything.
 10 JUDGE PRICE: Yeah.
 11 DR. JENSEN: But I guess it is more
 12 that we're just making a statement that we're --
 13 we're just going on like it is going to be
 14 approved like we voted on, so --
 15 MR. VAUGHN: Exactly.
 16 DR. JENSEN: Yeah.
 17 MR. VAUGHN: Any other discussion? We
 18 have a motion and a second. Any other discussion
 19 or questions?
 20 I'll ask Mr. McMillan to have the roll
 21 call vote. So, John, go ahead -- if you support
 22 the motion with a yes, if you oppose by no.
 23 MR. McMILLAN: Chairman Vaughn?
 24 MR. VAUGHN: Yes.
 25 MR. McMILLAN: Dr. Blakemore?
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1 DR. BLAKEMORE: Yes.
 2 MR. McMILLAN: Dr. Saliski?
 3 Mr. Gamble?
 4 MR. GAMBLE: Yes.
 5 MR. McMILLAN: Dr. Martin?
 6 Dr. Jensen?
 7 DR. JENSEN: Yes.
 8 MR. McMILLAN: Ms. Skelton?
 9 MS. SKELTON: No.
 10 MR. McMILLAN: Judge Price?
 11 JUDGE PRICE: No.
 12 MR. McMILLAN: Ms. Hatchett?
 13 MS. HATCHETT: Yes.
 14 MR. McMILLAN: Mr. Harwell?
 15 MR. HARWELL: Yes.
 16 MR. McMILLAN: Dr. Szaflarski?
 17 DR. SZAFIARSKI: Abstain.
 18 MR. McMILLAN: Dr. Harvey?
 19 DR. HARVEY: Yes.
 20 MR. McMILLAN: The motion passes,
 21 Mr. Chairman, two noes and one abstention.
 22 DR. JENSEN: So could I just ask our
 23 legal legals why they opposed it.
 24 JUDGE PRICE: From my standpoint, it
 25 is just duplicate. It is not necessary --

1 And at this point in time of where we
 2 are with the awarding of licenses, we don't feel
 3 like that we have a problem and we're ready to
 4 move forward. And that is what this declaration
 5 of not imposing a stay -- that is what it says.
 6 MS. SKELTON: Yeah. I understand
 7 that. I agree with Judge Price as well and his
 8 assessment of the issue.
 9 MR. VAUGHN: Okay. Any other
 10 discussion on the -- on that item?
 11 Well, thank all of you for chiming in,
 12 and you've got great thoughts and explanations
 13 and great concerns. It is always good to hear.
 14 We'll take it from here.
 15 Is there any other old business to
 16 discuss?
 17 What about new business?
 18 The next meeting is scheduled for
 19 January 11th at 1:00 p.m. I'm not sure yet if it
 20 will be a virtual meeting or in person. We'll
 21 kind of wait and see what we have to discuss
 22 closer to time.
 23 If no one else has -- has anything to
 24 bring up, we will have a motion to adjourn. Is
 25 there one?

1 DR. JENSEN: Okay. Yeah, I hear you.
 2 Yeah, I just think the point was to make a point
 3 to the judge that we weren't at some point going
 4 to just put stays on -- I don't know if that
 5 helps or not.
 6 What about you, Loree?
 7 MS. SKELTON: I raised the issue back
 8 in -- during the drafting of the rules that there
 9 is a -- there is a problem when you have licenses
 10 issuing the same day that appeals and requests
 11 for investigative hearings are due because it --
 12 it almost moots the investigative hearings if --
 13 if the process isn't stayed while other people
 14 are contending they should have been awarded a
 15 license at the same time that others are moving
 16 forward with the -- license.
 17 I don't think you can do both at the
 18 same time.
 19 MR. VAUGHN: I think the -- the
 20 statement being made here is, in the past, when
 21 the Commission has recognized that we had a
 22 glitch or a potential problem, that is when we
 23 imposed a self-imposed stay by the
 24 Commission: because we recognized we had a
 25 problem.

1 MS. SKELTON: So moved --
 2 MR. McMILLAN: Let me just say:
 3 Thanks to you all for this dedicated work that
 4 we've been taking on for a number of months, that
 5 you have especially. And I texted our staff
 6 Christmas -- Merry Christmas and Happy New Year
 7 and look forward to a landmark year in '24, and I
 8 hope that is the way it turns out.
 9 And I say the same thing to you all:
 10 Thanks. Let's be as optimistic as possible. And
 11 hopefully we're going to get this thing moving
 12 more expeditiously in '24. Thanks a lot.
 13 MR. VAUGHN: You're exactly right,
 14 John. When I look back on our time frame from
 15 November the 27th to December the 12th, we got an
 16 awful lot done in a -- in a few weeks there. And
 17 that was because of excellent work, a lot of
 18 commitment and dedication on the part of our
 19 staff and our Commission members.
 20 So thank all of you for being so
 21 diligent and giving a lot of your time right
 22 there at a crunch time, Thanksgiving into
 23 Christmas holidays. But that was excellent work.
 24 It is always good to hear all the
 25 comments, the concerns and questions; so don't

1 ever think that you're not allowed to express
 2 your thoughts and concerns and questions. That
 3 is what we, as Commission members, need to always
 4 be prepared to do. So I thank all of you for
 5 being so participating in this effort. So
 6 hopefully 2024 will afford us a time frame we can
 7 get moving.
 8 But anyone else have anything before
 9 we adjourn?
 10 I think Ms. Skelton made a motion. Is
 11 there a second?
 12 DR. JENSEN: Second. Eric.
 13 MR. VAUGHN: Is that Dr. Jensen?
 14 DR. JENSEN: Yep.
 15 MR. VAUGHN: Okay, Dr. Jensen. Any
 16 other discussion?
 17 All right. We'll stand adjourned at
 18 2:40 p.m. Thank all of you for attending today.
 19 We'll see you in a couple weeks.
 20 MS. PETERS: Chairman Vaughn, can we
 21 call the roll, please.
 22 MR. VAUGHN: Yes. Go ahead. Go
 23 ahead, John. Can you call the roll again.
 24 MR. McMILLAN: Chairman Vaughn?
 25 MR. VAUGHN: Here.

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1 MR. McMILLAN: Dr. Blakemore?
 2 UNIDENTIFIED SPEAKER: This is on a
 3 motion to adjourn.
 4 DR. BLAKEMORE: Here.
 5 MR. VAUGHN: Oh, I'm sorry.
 6 MR. McMILLAN: Dr. Saliski?
 7 Mr. Gamble?
 8 MR. GAMBLE: Yes.
 9 MR. McMILLAN: Dr. Martin?
 10 Dr. Jensen?
 11 DR. JENSEN: Yes.
 12 MR. McMILLAN: Ms. Skelton?
 13 MS. SKELTON: Yes.
 14 MR. McMILLAN: Judge Price?
 15 JUDGE PRICE: Yes.
 16 MR. McMILLAN: Ms. Hatchett?
 17 MS. HATCHETT: Yes.
 18 MR. McMILLAN: Mr. Harwell?
 19 MR. HARWELL: Yes.
 20 MR. McMILLAN: Dr. Szaflarski?
 21 DR. SZAFIARSKI: Yes.
 22 MR. McMILLAN: Dr. Harvey?
 23 DR. HARVEY: Yes.
 24 MR. McMILLAN: Motion carries,
 25 Mr. Chairman.

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1 MR. ROBINSON: Dion Robinson --
 2 MR. VAUGHN: All right. Thank you,
 3 Dion. Good hearing that you're coming in. Thank
 4 you to Mr. McMillan for the roll call, and we'll
 5 see all of you in a couple of weeks.
 6 (Proceeding adjourned at 2:41 p.m.)
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1 C E R T I F I C A T E
 2
 3 STATE OF ALABAMA)
 4 JEFFERSON COUNTY)
 5
 6 I hereby certify that the above
 7 and foregoing proceedings was taken down
 8 by me in stenotype, and the colloquy
 9 thereto was reduced to computer print
 10 under my supervision, and that the
 11 foregoing represents a true and correct
 12 transcript of the proceedings given by
 13 said parties upon said hearing. I further
 14 certify that I am neither of counsel nor
 15 of kin to the parties to the action, nor
 16 am I in anywise interested in the result
 17 of said cause.
 18
 19 /s/Jason Kobielus
 20 Jason Kobielus, Commissioner
 21 (My commission expires Sept. 8, 2026)
 22 RPR #990854 - Expires Dec. 31, 2024
 23 Alabama CCR #668 - Expires Sept. 30, 2024
 24
 25

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EXHIBIT C

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.

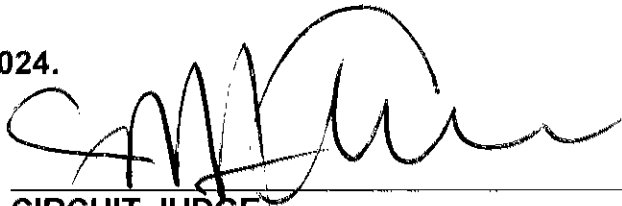
Accordingly, it is hereby **ORDERED, ADJUDGED, and DECREED** as follows:

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



EXHIBIT D

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.)	

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*

ORDER

The Court held a hearing on January 24, 2024 to address a number of pending motions. As stated on the record during the hearing, it is hereby

ORDERED as follows:

1. Trulieve Alabama, Inc.’s Motion for Protective Order (Doc. 668, as amended Doc. 691) is **DENIED**, except as otherwise provided below.
2. Trulieve’s Motion to Stay the TRO (Doc. 774); the Commission’s Motion for Reconsideration of Orders Allowing Discovery and for Protective Order (Doc. 682, as amended Doc. 824); and the Commission’s Motion for

Reconsideration of the Court's Order Granting Plaintiff's Motion for Temporary Restraining Order and Opposition to Preliminary Injunction (Doc. 694) (as it applies to the TRO) are **DENIED**, except as otherwise provided below.

3. The Court has concluded that discovery will assist the Court in evaluating the propriety of preliminary injunctive relief, which is to be adjudicated at and following the February 28, 2024 hearing set in this matter. For that reason, the Court has, in its discretion, allowed limited discovery to be taken from the Commission.

- a. As set out in the Joint Report to the Court (Doc. 795), while the Commission has preserved and reserved its right to assert its position that no discovery should be allowed, the parties have worked cooperatively to narrow the scope of written discovery requested from the Commission in the event the Court did allow discovery (as it has done). In the event disputes remain on written discovery after further discussions among counsel, the Court will take up any disputes as called upon.
- b. The Commission argued that, if the Court were going to allow discovery, the scope of depositions of commissioners should be narrowed to exclude, in addition to other privileged communications, the Commissioners' mental thought processes

and deliberations on the basis that (1) the administrative process is ongoing and it is improper to allow discovery on the Commissioners' mental thought processes in the midst of administrative proceedings when the Commission has not made a final decision on licenses; and (2) the Commissioners' mental thought processes are protected from disclosure by what the Commission claims is the "deliberative process" privilege. As with all privilege questions, the Court cannot evaluate the appropriateness of the invocation of any such privilege (assuming that privilege exists and applies in this case) without context, specifically without reference to specific questions to be asked to a witness. The Commission's outstanding Motion for a Protective Order limiting depositions is therefore **DENIED**. In the event a deponent is asked questions in deposition which call for the disclosure of privileged information, regardless of the nature of the privilege being asserted, the questions of privilege will be handled as all such questions are handled in the normal course: on a question-by-question basis, with an interjected instruction not to answer, a marking of those questions for later submission to the Court, and (if necessary) briefing and argument before the Court on

the appropriateness of answers to the question(s) posed.

- c. As previously ordered, the challenging Plaintiffs shall at this stage of the case be entitled to take six (6) depositions. Depositions shall each be limited to seven (7) hours in length, excluding breaks. Plaintiffs shall agree among themselves as to how to best use the allotted time.
- d. As discussed by the parties on January 24, it is generally understood that, absent further order by the Court of Civil Appeals, the Commission will provide the responses to written discovery as agreed upon and will produce documents responsive to the written requests as agreed upon, so that depositions can be scheduled and can take place prior to the February 28, 2024 preliminary injunction hearing set by prior order. The Commission shall, by February 9, 2024, provide the responses to agreed-upon written discovery or object to any request not agreed upon, with the Court to take up any disputes as called upon.

DONE AND ORDERED this 30th day of January, 2024.

/s/ JAMES H ANDERSON
CIRCUIT JUDGE

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IN THE CIRCUIT COURT OF MONTGOMERY COUNTY
MONTGOMERY, ALABAMA
FIFTEENTH JUDICIAL CIRCUIT

ALABAMA ALWAYS, LLC,
Plaintiff,

V.

CV-2023-231

STATE OF ALABAMA MEDICAL
CANNABIS COMMISSION,
Defendant.

Master Case

* * * * *

PROCEEDINGS, held before James H. Anderson,
Circuit Judge, on January 24, 2024.

* * * * *

Mary R. King, RMR, CCR-387
Official Court Reporter

APPEARANCES

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REPRESENTING YELLOWHAMMER MEDICAL DISPENSARIES, LLC;
PURE BY SIRMON FARMS, LLC and SOUTHEAST CANNABIS
COMPANY, LLC:

A. Patrick Dungan, Esq.

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Mark D. Wilkerson, Esq.

* * * * *

1 THE COURT: I thought I was going to get
2 to have one of my favorite things as a judge, a
3 discovery dispute. It looks like we've got a few
4 other filings in the last twenty-four hours.

5 MR. JACKSON: Surprise, surprise.

6 THE COURT: I make an effort to try to
7 read everything before these hearings, but I can
8 tell you I scanned everything, so -- but I think
9 procedurally there's a couple of things we need
10 to take up before we start fussing over the
11 discovery issues.

12 One, we had a lot of people that filed
13 motions for joinder, to join in. And I -- it's
14 my hope to try to have everything filed under the
15 master case, so when something is filed and
16 somebody files a pleading -- it may only have to
17 do with your client -- but if relates to this
18 whole issue, we'll have -- it will be easier on
19 everybody to say this is filing docket number
20 817. And so I think if I haven't already --
21 unless there's something -- I'm going to grant
22 these motions for people to join.

23 And we've had some amended complaints. I've

1 had notices to the Court of Civil Appeals that
2 have been docketed. I don't think the Court is
3 going to take any action on those, but it's just
4 been noted for the file.

5 And then we have -- we do have -- something I
6 think I need to take up is a motion to un-stay my
7 stay, is that the --

8 MR. RAGSDALE: Double stay.

9 MR. BLOOM: William Bloom for Trulieve
10 Alabama. That's a correct assessment, Your
11 Honor.

12 THE COURT: All right. And I've
13 reviewed that, and I reviewed the responses.
14 And, you know, unless you need me to put
15 something else on the record, I'm not going to
16 un-stay my motion to stay. And so if you need to
17 take that up with the appellate court, you can
18 let them -- you need that for the record.

19 MR. BLOOM: Yes, sir.

20 THE COURT: If you want me to have
21 something -- an order on the record so that you
22 can advise the Court other than I've done that --

23 MR. BLOOM: I would hate to add to the

1 paperwork you're already working through, but we
2 would appreciate that very much.

3 THE COURT: I'll have Mr. Green, who is
4 going to be stuck with this.

5 MR. BLOOM: I apologize to Mr. Green for
6 adding the paperwork.

7 THE COURT: But all I need is the -- I
8 don't need a reasoned opinion, just that it was
9 noted and taken under -- I read and reviewed the
10 pleadings, and, for the record, I'm not
11 un-staying my stay or whatever I need to say.
12 That's denied.

13 All right. Is there anything else that --
14 other than the discovery issue that -- I know we
15 have motions related directly to the discovery,
16 and then we have what we're going to do after
17 that.

18 I received -- is there anything else?

19 MR. RAGSDALE: Not for us.

20 THE COURT: All right. I received a
21 report from the parties about where they were in
22 the negotiations. And I appreciate y'all getting
23 together and working on that.

1 It looks like in reading those -- in fact, my
2 first blush in looking at that, it looked like
3 that there was a complete -- I know you're not
4 saying you accept the fact that there was a
5 complete rejection of any depositions, but that's
6 not correct, Mr. Jackson.

7 MR. JACKSON: No, it's not -- it's not a
8 rejection of any deposition, it's the scope of
9 questioning at depositions, if Your Honor does
10 allow discovery.

11 THE COURT: Has there been discussion
12 about who?

13 MR. JACKSON: They've noticed five
14 commissioners and the executive director, so we
15 know who.

16 THE COURT: Okay.

17 MR. JACKSON: And then there's going to
18 be -- you're probably going to need to rule -- if
19 you're going to allow discovery -- an hour
20 limitation on the depositions.

21 THE COURT: Okay.

22 MR. JACKSON: But our position -- our
23 initial position is no discovery. But I

1 understand -- and I'm prepared to argue that --
2 but when we met, it was not our position you're
3 not telling us, you know, to take any depositions
4 if discovery is allowed. We just want a
5 limitation.

6 THE COURT: Okay. I'm just reading the
7 response. It looked like there was things that
8 said if this is --

9 MR. JACKSON: Right.

10 THE COURT: -- permitted. And I was
11 looking at the written discovery on the
12 interrogatories. I think y'all agreed to
13 disagree on some things. And then they've agreed
14 to amend some of their written requests.

15 So in order to -- here is what I want to say
16 for the record, that it's the Court's opinion
17 that some discovery will help this process. And
18 I think -- I'll make it clear this is -- I'm
19 saying it's in my discretion that I'm allowing
20 what I've called limited discovery -- and I don't
21 mind having restrictions on time and numbers like
22 we've had in the order -- but I think with the
23 allegations that have been made and what we

1 anticipate could happen at the hearing at the end
2 of next month, I think discovery would be
3 helpful, not just for the record, but for this
4 Court to make its determination on the
5 preliminary injunction issues based on what's
6 been pled.

7 And so I don't want to completely limit
8 discovery. I want to limit it in -- more in time
9 and space so that we can get to the point of the
10 spear on these issues.

11 So do y'all want to -- does anybody want to
12 have anything, other than Jackson, you tell me
13 I'm wrong.

14 MR. JACKSON: Judge, all I would say is,
15 you know, I know when to shut up. Your Honor has
16 indicated what your inclination is and why. I
17 will not go into why we think there should be no
18 discovery. I was prepared to do that. But Your
19 Honor has, as you said, scanned what we have in
20 writing and so I understand the Court's
21 inclination. I'll forego addressing those
22 points.

23 THE COURT: But in no way am I saying

1 that you waive your objections to it.

2 MR. JACKSON: Yes, sir.

3 THE COURT: Okay. Thank you, Mr.
4 Jackson.

5 Now --

6 MR. JACKSON: So, I think, Judge, not to
7 preempt you, but knowing -- kind of knowing where
8 you're headed, the major point of disagreement --
9 and I think there may be a domino effect -- is
10 going to be on the depositions and what they're
11 allowed to question.

12 And by their statements in court and by their
13 statements in pleadings, what they basically have
14 said is we want to know why they did what they
15 did. We want to know -- for example,
16 Mr. Somerville wants to know why Commissioner X
17 ranked him twenty-sixth and ranked somebody else
18 second and all that; in other words, what and why
19 and not just what did you have in front of you,
20 but what did you consider? Why did you do what
21 you did? How much weight did you put on this?
22 Did you consider this? Did you consider that?

23 We contend, Judge, that gets into a

1 deliberative process, and it's privileged on the
2 one hand; and, on the other hand, what we say
3 about that, Your Honor, is that this is still an
4 ongoing process.

5 So far, all that's been done -- albeit, it's
6 been done three times -- all that's been done so
7 far is licenses have been awarded. You stayed
8 the issuance of licenses. If -- setting aside
9 the litigation, the way the process would have
10 worked is awards issued -- excuse me -- licenses
11 awarded, licenses issued, inspections -- because
12 those inspections may have revealed some licenses
13 were improperly issued -- investigative hearings;
14 and, at the end of the investigative hearings, a
15 final decision by the commission where the
16 commission would then make the final award, so to
17 speak, after the investigative hearing, which
18 would include discovery.

19 And so one of our positions now with regard
20 to asking them what did you consider, why did you
21 consider and all that, two things. One, we're in
22 the middle -- we're not even in the middle of
23 that yet. All but one of them have requested an

1 investigative hearing at which they can bring out
2 these things that they're contending.

3 And, so, right now, to allow them to depose
4 the commissioners as to not only what was in
5 front of them, but what did they consider, why
6 did they consider it, how did they reach the
7 point that they reached when they voted yea in
8 favor of one applicant, and, then, of course, the
9 applications -- the licenses ran out. So, as a
10 matter of statute, they couldn't award more than
11 five integrated. So once they hit five, they
12 were done basically.

13 But be that as it may, we contend, Judge,
14 that that's totally improper to ask some
15 questions about their deliberative process and
16 what they considered in the middle of the process
17 when they still have to make the final
18 determination. It may be even an undue influence
19 on the process.

20 If they've got to now explain how they
21 reached the decisions they made in making the
22 awards in the first instance, it may have a
23 chilling effect on what they deliberated and how

1 they make that final determination at the end of
2 the game.

3 But beyond that, it does get into the
4 deliberative process. And there is a
5 deliberative process privilege. I would cite to
6 the Court -- just bear with me for a second.
7 Here it is -- ex parte Alabama Department of
8 Environmental Management. It's 627 So.2d 927,
9 Alabama Supreme Court case.

10 In that case, they are addressing the
11 deliberative process privilege, okay? They're
12 not saying we recognize it. They are addressing
13 it as though it exists. Factually, it's a little
14 bit different because it involves rule-making,
15 whereas, here, we are talking about an actual
16 award of licenses.

17 But the point is -- and in court last time,
18 they told you, Judge, there's no such privilege.
19 There is not even -- there is not even such a
20 privilege. Yes, there is. It was addressed in
21 that case. And it wasn't addressed on the lines
22 of is there one or is there not one. It was
23 addressed that there is one and how it applied in

1 that particular context.

2 So our position is it does apply, and then
3 Your Honor in discretion has to determine how it
4 applies in this context. And we contend that
5 what -- really, the guts of it, what they want to
6 do is take the depositions of each one of the
7 commissioners and ask those why, what, you know,
8 what did you consider, why did you do this, that
9 and the other, that's really what they want
10 beyond the documents. And so we contend, Judge,
11 that the deliberative process -- that just goes
12 too far.

13 We're not objecting -- if Your Honor is going
14 to allow discovery, we're not objecting to them
15 being deposed on what did they have before them,
16 you know, when they made the decisions that they
17 made. I think Your Honor is inclined to allow
18 them to ask questions about who did you talk to
19 before, you know, what did you talk about or
20 whatever, but not on December 12th as to what
21 they -- in terms of what they did have before
22 them, what they considered, why they did what
23 they did, we think, is too far. And that, I

1 think, is what Your Honor has got to make a
2 ruling on.

3 THE COURT: Well, I think you've figured
4 out where I'm coming from, but somewhere there's
5 a line that goes from what was presented to them,
6 what was said to them, what was there to be
7 considered and then asking their mental process.

8 MR. JACKSON: Right.

9 THE COURT: And so are you saying that
10 what they've told you in their depositions they
11 intend to ask their mental operations about
12 Commissioner --

13 MR. JACKSON: Yes, they --

14 THE COURT: -- Jones, why did you
15 ultimately make the decision?

16 MR. JACKSON: Right. They're up front
17 about it. Will's position has been -- continues
18 to be -- this is a contested case and because
19 it's a contested case, the commission has got to
20 state reasons why they did what they did, okay?
21 And he says they've got to do that now that this
22 is a contested case on the front end of the
23 deliberative process, and they've got to do that,

1 and the only way I can know what they did is to
2 ask them those questions.

3 THE COURT: Well, one of the things that
4 came up when we were asking about the
5 administrative process was that -- and I believe
6 the plaintiffs said that there's no provision
7 that they have in the administrative process --
8 they haven't been told why you didn't get a
9 license. In other words --

10 MR. JACKSON: So far, that's correct.

11 THE COURT: In other words, in the
12 situation you think of administrative bodies
13 where you go and apply --

14 MR. JACKSON: For a CON, right.

15 THE COURT: -- and then you're told --

16 MR. JACKSON: Right.

17 THE COURT: -- you fell short here or
18 you were inferior because of X, Y, Z.

19 MR. JACKSON: Right, right.

20 THE COURT: And so I think they have a
21 valid point there.

22 MR. JACKSON: And, so, to address that
23 point, that does not mean what -- with that

1 contention, that does not mean that that is not
2 going to happen at the end of the investigative
3 hearing. Because at the end of the investigative
4 hearing, there may be a recommended order from
5 the Administrative Law Judge with reasoning that
6 the commission can, you know, adopt or not adopt;
7 and even if not, the commission may then state
8 reasons why it did what it did or didn't do.

9 THE COURT: Well, I think Mr. Fox is
10 about to say, well, how do we prepare for that
11 investigative hearing if we don't know what you
12 said we were inadequate in.

13 MR. FOX: I've been in front of him too
14 many times over the years.

15 MR. BEN ESPY: Well, Your Honor, it
16 makes it worse than that. I mean, the problem
17 we've got here is you want me to go an appellate
18 procedure and try to convince you of my
19 suitability for a license without having any idea
20 why you've determined I'm not suitable. I could
21 spend my whole time up there talking about things
22 that aren't even on your radar.

23 THE COURT: And, you know, it may be

1 that that's in the administrative procedure that
2 y'all say is the hold in this issue for -- that
3 we can't wait until we're in that process if we
4 don't know what we need to address.

5 MR. FOX: Your Honor, all they're giving
6 us at this point is the opportunity to go in
7 front of them -- or in front of the hearing
8 officer that supposedly will be hired at some
9 point -- and us go, they were wrong. We don't
10 know why they were wrong, but they were wrong
11 because we were better than those other five.
12 And they've got to give us something to focus our
13 argument on, not before they make the ultimate
14 ruling.

15 MR. SOMERVILLE: And you're right, Your
16 Honor, that's what we're contending. We are not
17 contending that we're in a contested case now
18 because they have not initiated a contested case.

19 And again, Section 41-22-12 of the Alabama
20 Code, 12(b) says they've got to give you a --
21 well, (a) says: In a contested case, all parties
22 shall be afforded an opportunity for hearing
23 after reasonable notice in writing delivered. It

1 says -- and subsection (b) says: The notice
2 shall include a statement of the time, place and
3 nature of the hearing, a statement of the legal
4 authority and jurisdiction under which the
5 hearing is to be held, a reference to the
6 particular sections of the statutes and rules
7 involved, a short and plain statement of the
8 matters asserted.

9 That's -- and they can't -- our point has
10 been they can't do that on the current record
11 because nobody knows why these commissioners
12 voted the way -- nobody knows why; and, frankly,
13 I don't know if we can ever figure out why.

14 THE COURT: Well, let's back up to one
15 issue having to do with the deliberative process
16 on a body.

17 Are you saying, Mr. Somerville, that you can
18 ask Commissioner X, now, you tell me why you
19 voted this way?

20 MR. SOMERVILLE: I think we can, Your
21 Honor. And let me in more detail -- I think
22 Mr. Jackson is right about that case being --
23 relating to a rule -- the formulation of a rule

1 as opposed to a deliberative process. And it may
2 be that there is that process -- that that
3 privilege exists in the context of a rule.

4 But here it says, clearly, in the Open
5 Meetings Act, when you're talking about a
6 deliberative process to make a decision, there,
7 by definition, cannot be a deliberative process
8 privilege because it is the public policy of the
9 State of Alabama that the deliberative process of
10 governmental bodies shall be open to the public
11 during meetings as defined in Section
12 36-25A-2(6).

13 THE COURT: It's your contention there
14 was no deliberation.

15 MR. SOMERVILLE: Well, not deliberation
16 in public.

17 THE COURT: Yes. No, I know there's
18 allegations about serial meetings.

19 MR. SOMERVILLE: And I think we're
20 entitled under the AAPA claims we've made to find
21 out what deliberation might have taken place in
22 private, by email, and whether they were
23 influenced by that.

1 THE COURT: Right. And, Mr. Somerville,
2 in Alabama, can you put a legislator under oath
3 and ask him why he voted a certain way on a bill?

4 MR. SOMERVILLE: I don't know. I doubt
5 that it's admissible, but I think you probably
6 can ask him.

7 THE COURT: Mr. Wilkerson.

8 MR. WILKERSON: I just suggest to go to
9 that point, the Open Meetings Act, Judge,
10 references deliberation in public. We don't
11 disagree with that. That is obviously the
12 interaction, the public deliberation, as opposed
13 to the mental process is what -- we're not aware
14 of any case that suggested that what is inside
15 someone's head and not produced in writing --

16 THE COURT: That's what I am asking --

17 MR. WILKERSON: -- is open to discovery.

18 THE COURT: -- like what was the
19 ultimate -- what was the final thing. You know,
20 I know Bill Jones told you this, and Tommy Smith
21 told you this. And so, you know, what was the
22 ultimate reason for you voting this way.

23 MR. JACKSON: Right.

1 MR. WILKERSON: And we didn't write the
2 statute, the Legislature did. But the
3 investigative hearing provision in the statute --
4 which I think Alabama Always has raised issues
5 about in terms of how it -- whether it comports
6 with other parts of the Administrative Procedure
7 Act -- but what the Legislature did in the
8 investigative hearing process was they said that
9 the evidence in the investigative hearing process
10 wasn't limited to what was before the commission.
11 I mean, that's in the rules. It's in the
12 statute. And so it has some aspects -- although
13 it mentions the suitability of the applicant --
14 the denied applicant -- but it has some aspects
15 of a -- of a complete hearing, Judge. They may
16 can introduce other evidence during that process
17 and get a complete determination under the
18 investigative hearing portion.

19 THE COURT: Let's just get something
20 straight on the record so that I -- for all these
21 people to get this far, there was a preliminary
22 culling out of the people that had applications,
23 correct?

1 MR. WILKERSON: Yes, sir.

2 THE COURT: And those people were
3 notified --

4 MR. WILKERSON: They were.

5 THE COURT: -- that you were -- you
6 didn't have -- so anybody that's left here has
7 already been through that initial process and
8 been advised they had the -- on paper, they
9 looked like they had the minimum requirements?

10 MR. JACKSON: Yes.

11 THE COURT: Does everybody agree to
12 that?

13 MR. RAGSDALE: Yes, sir.

14 THE COURT: Okay. So you've kind of
15 ruled that out because you've already passed
16 that.

17 So what do y'all want to ask about a mental
18 process that, you know -- does anybody want to
19 speak?

20 MR. GREEN: Judge, I would say this.
21 This is where the contested case provisions do
22 not interface well with what the reality of what
23 has happened and where we are.

1 Mr. Jackson just told you that we --
2 unsuccessful applicants -- would get a statement
3 of reasons at the end of the investigative
4 hearing process. That's what they just said.

5 MR. JACKSON: I think I said may, but --

6 MR. GREEN: That's -- the problem with
7 that is you can't start a contested case, which
8 is what the investigative hearing has to be by
9 statute, until you give the dissatisfied
10 applicant a statement of reasons. So it doesn't
11 come at the end, it comes at the beginning of the
12 process.

13 Now, where that interfaces with the
14 deliberative process issue we're talking about is
15 this.

16 As we all know, there was no deliberation at
17 all in the public, nothing, not a word said about
18 anybody, just votes. So it's not like we're in a
19 position where commission staff or somebody else
20 can write a memo to each of the unsatisfied --
21 unsuccessful applicants and say this is why you
22 didn't get a license. The only way to find out
23 why anybody didn't get a license is to ask the

1 commissioners.

2 The difference, by the way, in your
3 legislative example, I would say this, is the --
4 you're not going before the Legislature to get a
5 license which by code provides certain procedures
6 for how you get it.

7 The problem we have here is they are subject
8 to the Open Meetings Act, so they have to
9 deliberate in public. They are subject to the
10 requirements of the statute that require that the
11 investigative hearing take place as a contested
12 case proceeding under the Administrative
13 Procedures Act, which means they have to give us
14 a statement of reasons at the beginning of the
15 process.

16 We have absolutely nothing to go on other
17 than to ask them --

18 THE COURT: Let me ask you this,
19 Mr. Green. What if the commission were to tell
20 you the reason you didn't get a license is there
21 were five other people that got rated higher than
22 you?

23 MR. GREEN: I don't know what they're

1 going to say.

2 THE COURT: But, I mean --

3 MR. GREEN: But I've got to be able to
4 find out what they're going to say in order to
5 get some kind of explanation because at this
6 point we have nothing to go on, other than to ask
7 those commissioners themselves, again, because
8 they chose to say nothing -- chose to be mute in
9 public; and, by the way, I think we have to say
10 in defiance of the Open Meetings Act.

11 THE COURT: Well, if we've got -- we've
12 got to establish that everybody met the minimum
13 requirements on paper to obtain a license. The
14 fact that the license wasn't awarded to one of
15 your clients was -- you could have been awarded a
16 license, but they gave it to five other people
17 before they gave it to you.

18 MR. GREEN: And that may be what they
19 say. I don't know.

20 MR. SOMERVILLE: I don't think it's --
21 there were certain minimum requirements. They
22 refer to them as pass/fail issues. I don't think
23 that included some of the statutory mandates, for

1 example, that I keep on harping about. I know
2 the --

3 THE COURT: Let me guess what that is.
4 They've got to be ready. Okay.

5 MR. GREEN: We'll all say it together.

6 MR. SOMERVILLE: So that was not one of
7 the ones that they graded people on a pass/fail
8 basis on. So that was not one of the elements of
9 disqualification.

10 THE COURT: I understand that. But I'm
11 just saying under this situation, does the
12 commission -- they say, yeah, you could have
13 gotten a license, but you were seventh place and
14 not -- and we were only giving it to the top
15 five.

16 MR. BEN ESPY: Your Honor, the problem
17 with that is how we got to who the top five were
18 to begin with.

19 THE COURT: Well, that's what I was
20 going to ask.

21 MR. BEN ESPY: That's the problem,
22 right? You -- the way we got there was by the
23 illegal ranking thing that we have attacked.

1 The reason we should be able to ask them why
2 they did what they did is because we contended --
3 as have a lot of these others -- that what they
4 did not only violated the law but was arbitrary
5 and capricious. They randomly gave rankings
6 without any indication as to why. And those
7 rankings directly impacted whether I got a vote.

8 I mean, I'll give you an example directly to
9 me. My client was ultimately ranked number
10 seven. The reason I was ranked number seven is
11 because Dr. Harvey ranked me thirtieth.
12 Thirtieth. I had a one. I had a two. I had
13 sixes. He ranked me thirtieth. If he had ranked
14 me twenty-seven or higher, I would have gotten
15 the vote. So I think I'm entitled to know why he
16 gave me a thirty. I think I'm certainly entitled
17 to know why he gave me a thirty when he gave
18 Sustainable Alabama a twenty-nine.

19 THE COURT: Tell me this.

20 MR. BEN ESPY: Yes.

21 THE COURT: You think you can ask this
22 commissioner under oath why he ranked your client
23 thirtieth?

1 MR. BEN ESPY: Yes.

2 THE COURT: Now, why can't he ask that?

3 MR. JACKSON: Why is it assumed that one
4 and two are proper and thirty is improper?

5 He's all right with one and two. He doesn't
6 want to ask those commissioners why you ranked me
7 one and two.

8 MR. BEN ESPY: I do. I'll ask them that
9 question, absolutely.

10 THE COURT: Wait a minute. Mary is only
11 writing one at a time. We've got to get the
12 record.

13 MR. JACKSON: They want to assume any
14 good score is good and any bad score by
15 definition is bad. Why? Why is that the case?

16 It doesn't really matter because all of the
17 ranking was for was not the dispositive factor
18 that the awards were being made. All of the
19 scores was to take up the order in which the
20 applicants would be considered. In fact --

21 MR. BEN ESPY: Which was manipulated.

22 THE COURT: Y'all sit down. One at a
23 time.

1 MR. JACKSON: And, in fact, during that
2 process -- after the ranking occurred and the
3 order was established, during that process,
4 motions were made by some of the commissioners to
5 take some of the folks out of that order; for
6 example, Alabama Always, but it didn't get a
7 second.

8 So the rankings were not -- and they continue
9 to harp on that and try to convince Your Honor
10 that the rankings were the basis upon which
11 awards were made. The rankings were nothing more
12 than to determine who is going to be considered
13 first.

14 He's talking about he was seventh. With a
15 different score, he may have been fifth. That
16 doesn't mean he would have been awarded. They
17 could just -- he could have failed for lack of a
18 second or they could have said no.

19 There's an assumption there that if he got
20 into the top five of the rankings that he was
21 going to get a license. That didn't happen for
22 --

23 MR. BEN ESPY: I'm not making an

1 commission has just conceded at this moment that
2 the rankings system is itself arbitrary and
3 capricious. They just admitted it.

4 MR. ESSIG: Judge, one additional thing,
5 to follow up on that, is I think our point would
6 be -- and I think your point about whether or not
7 you put a legislator under oath to ask them a
8 question about how they voted, I think that's a
9 helpful analogy because it helps us distinguish
10 that from what we're dealing with here and talk
11 about why even though a deposition question to a
12 legislator may not be appropriate, deposition
13 questions to the commissioners are appropriate.

14 What is different between this situation and
15 a group of legislators is that everybody in this
16 room on our side of the room has a right to get
17 the benefit of the rules that they created as our
18 applications for licenses are being considered.

19 And I think the point we've made -- one of
20 the points we've made that pretty much everybody
21 on our side of the courtroom agrees with is that
22 they violated their rules when they did away with
23 the scoring and when they did away with the blind

1 scoring and didn't have any kind of objective
2 analysis of the applications when they did the
3 awards. I think that's one problem with the ways
4 in which they violated the rules when they
5 awarded the licenses.

6 There are numerous other things that we
7 should be allowed to ask about. The regulations
8 that they adopted, in addition to the statutory
9 requirements that Mr. Somerville talks about,
10 sets out a number of factors that the
11 commissioners have to consider in addition to the
12 scoring when they're issuing licenses.

13 The primary factor that's supposed to drive
14 their decision is the information in the
15 applications and the application materials that
16 come from the applicants. That's but one example
17 of the requirements that apply to them that we
18 ought to be able to explore in these depositions.

19 Here is the reality, Judge Anderson. We can
20 talk about arbitrary and capricious. We can talk
21 about administrative deference. If we discover
22 during the course of asking in depositions that
23 they violated a rule that they adopted, any

1 deference owed to them is gone under the
2 Administrative Procedures Act. The deference is
3 gone if we establish that they violated a rule.

4 And so I think asking questions like why did
5 you vote somebody's -- Bragg Canna thirtieth, and
6 they say because the guy that came in had a pink
7 tie, that's not okay. That's not an okay basis
8 when that was the only scoring -- put air quotes
9 around that -- when that's the only scoring that
10 existed at the time that licenses were awarded.
11 And if that is the only criteria that that
12 particular commissioner considered when they put
13 Bragg Canna thirtieth and gave them the only
14 possible score they could get, that is improper.
15 That is a violation of the rules. And that is a
16 dereliction of their duty as set out by the
17 regulation.

18 So, I think, in many ways, we're thinking
19 about this the wrong way. I agree there's
20 probably a line to draw, but there should be
21 pretty wide latitude.

22 THE COURT: So if one of the
23 commissioners just says I didn't like the guy,

1 you're saying that's improper?

2 MR. ESSIG: I think, depending on the
3 other context, the way that commissioner answers
4 questions, I think absolutely that could be
5 improper and -- absolutely that could be
6 improper.

7 MR. WILKERSON: Judge, if I may, the
8 first point he made is whether they were required
9 to have a blind review. It's a pure legal
10 question. It doesn't require discovery on that
11 issue at all.

12 As to the last point he made and in response
13 to your question, that's exactly what you review
14 on appeal ultimately, whatever the final record
15 is, is there substantial evidence to support
16 whether they are arbitrary or capricious. You
17 don't have that record yet.

18 We understand these interim arguments about
19 process in the middle of the proceeding, but what
20 we know is that the process isn't finished.
21 There may be arguments about what that process
22 looks like, but it's not finished. And the
23 record is not before you to make the decisions

1 that he indicates you should make -- and we
2 agree, arbitrary, capricious, did you follow your
3 rules -- but that record has not been formed.

4 THE COURT: Are they entitled to find
5 that out now?

6 MR. WILKERSON: Well, what we don't
7 have, Judge -- and they're right, they have the
8 right to investigative hearing. The individuals
9 who have asked for an investigative hearing and
10 had their applications denied, there will be a
11 scheduling order sent out in conjunction with the
12 investigative hearing. There will be an
13 Administrative Law Judge who assists in that
14 process. There will be the normal things you
15 have in an administrative hearing, Judge,
16 including an opportunity for these parties to
17 flesh out what their position is regarding the
18 scope of the hearing and the issues decided and
19 to go back to the statute -- the legislative
20 statute. There are not limits. They can
21 actually introduce evidence that wasn't before
22 the commission in their first award vote. That's
23 in the law. So they have an opportunity to do

1 that.

2 And once that record is complete and the
3 outcome -- understanding we'll have disagreements
4 probably as we go forward that will be before
5 you, and you can make all the determinations as
6 you would normally do -- if you believe at that
7 stage that the record is insufficient, that
8 further findings are needed, you can remand that
9 case back to the commission. The law allows you
10 to do that.

11 MR. RAGSDALE: Judge, if I might, part
12 of the problem is this decision really has to be
13 made on a question-by-question basis. It really
14 can't be a blanket rule.

15 For example, I think you've said -- or at
16 least I think they've agreed -- we can ask the
17 commissioner what did you have in front of you
18 when you made the decision. It's perfectly
19 proper.

20 The follow-up question is what did you
21 consider when you made your decision, which may
22 or may not include the things that are in front
23 of them and that are properly provided in the

1 regulations.

2 I think the third question, then, is what did
3 you base your decision on, amongst the things
4 that you considered? And did you consider
5 anything that wasn't properly in front of you?
6 Because if it was, that's where we get to the
7 point of being arbitrary and capricious.

8 My point is I don't think you can give him a
9 blanket ruling that we can't ask any questions
10 about how they made their decisions. That has to
11 be made on a case-by-case basis. And, frankly,
12 it's the same thing as an attorney/client
13 privilege question, right? I mean, you can make
14 a ruling that we can't ask attorney/client
15 privilege questions in deposition, but you really
16 need to rule on that on a question-by-question
17 basis as we go forward, which means we've got to
18 actually get to the point of asking those
19 questions in the depositions.

20 You have a lot of very smart lawyers -- as
21 well as Will -- in this case, who I think will
22 have the opportunity to ask questions recognizing
23 -- I certainly don't want to discourage the Court

1 from giving us some guidance, but I don't think
2 you can make a blanket rule before we ever ask
3 the first question in deposition.

4 MR. BROM: If I can add one thing. I've
5 been thinking about it from the perspective of
6 what are the responses that would potentially be
7 protected under whatever grounds. And I'm trying
8 to anticipate what's the commissioner going to
9 potentially say that would cause them to jump up
10 and say say no. And I don't know anything that
11 they would be able to say that really shouldn't
12 be discoverable.

13 Because if I ask a simple question why did
14 you vote this way, why did you rank this guy
15 twenty-nine versus one, what's the harm in the
16 commissioner saying, well, because they had some
17 tax issues, and that was important to me. So
18 what exactly is the information that they're
19 trying to protect that should not -- the
20 commissioners should be happy and willing to
21 explain why they did what they did?

22 And I think Your Honor -- you asked the
23 question about, well, can you take a member of

1 the Legislature and under oath question them.
2 You know, members of the Legislature -- they do
3 this all the time -- they take a vote. And the
4 first thing they do is they go out in the hallway
5 and find some reporter and tell the world why
6 they did what they did. So, you know --

7 THE COURT: I thought you just looked up
8 to see who gave them the money.

9 MR. BROM: That might be a good answer.
10 Who knows.

11 THE COURT: We don't have this here, so
12 -- but I asked about the legislator because I
13 figured there might -- with all these smart
14 lawyers, there might be somebody who can tell me
15 there's a case -- Mr. Jackson found a case with a
16 board.

17 MR. SOMERVILLE: Your Honor, I don't
18 think -- having read this case for the first time
19 on my iPhone, which is, you know, somewhat
20 problematic -- it does not as far as I can tell
21 actually recognize the existence of a
22 deliberative process privilege, for one thing.
23 And the holding was simply that depositions

1 reported cases that all deal with people trying
2 to get either criminal or quasi-criminal
3 investigative files from district attorneys and
4 things like that. And if you look at the cases,
5 they say things like, well, we can't let you talk
6 about military secrets.

7 There's absolutely no case. It's their
8 burden. They're going to assert a privilege.
9 Alabama is an open state. Our Legislature is
10 open. Our court is open. We have an OMA. We
11 have an Open Act. We are as open as you can get.
12 They are required to deliberate in public. So
13 there is no deliberative process privilege that
14 covers them. And they are attendant upon them to
15 provide you a case that says they are covered,
16 not a case that says it exists.

17 And they cannot provide you a single case
18 that says anything they're trying to cover up
19 here should be covered under deliberative process
20 privilege, not one single case that says that,
21 not one.

22 MR. GREEN: Well -- and particularly
23 when we are talking about a privilege that is

1 alleged to attach to a process that, by statute,
2 is supposed to be open, where the Open Meetings
3 Act specifically says -- I mean, it uses the same
4 phrase, it is the policy of this state that the
5 deliberative process be open. So there's no case
6 anywhere in which a governmental body that is
7 subject to an Open Meetings Act like that
8 nevertheless gets some protection of privilege.

9 The one other thing I'll say, Judge, about
10 this deliberative process issue is this. The
11 commission has raised this orally at the hearing
12 today. They have not filed a motion before you
13 that invokes it such that we can meet it.

14 If they're going to say there's a privilege
15 that applies, let them brief the question. Let
16 us respond to it. And, you know, right now,
17 we've having an argument on the fly about it.

18 THE COURT: Well, I don't blame you for
19 not doing it.

20 MR. GREEN: I just saying so we've got a
21 clear record on the issue.

22 MR. JACKSON: Well, to that point, it's
23 in our initial motion for protective order before

1 the supplement we filed. It's also been raised
2 in our opposition to the nonparty subpoena to
3 Dr. Stokes. It's before the Court. It's been
4 pled.

5 THE COURT: I've seen it.

6 MR. BEN ESPY: But, Your Honor, what
7 I'll say is when we had the meet and confer, you
8 know, we asked them point blank. This is what
9 they kept asserting, the deliberative process
10 privilege. I finally said if there's a case,
11 then give it to me.

12 And we asked -- and we said, look, we're
13 going to see Judge Anderson next week. We need
14 to get this figured out. File a motion in
15 limine. File the case law so that we can address
16 it. We asked them to do that. And here we are
17 again, they have no cases.

18 That should be as clear an indication to this
19 Court that no case that supports their position
20 exists.

21 But I'm all for Mr. Wilson's proposition, if
22 they want to fully brief their issue and let us
23 respond, I'm happy to do that. It won't take me

1 very long, but they should absolutely do that.

2 What they shouldn't do is keep asserting a
3 privilege to cover up what they did without
4 citing you a single solitary a case that says
5 they are even remotely right.

6 MR. BLOOM: Your Honor, if I might, I
7 appreciate Mr. Espy's position. I actually
8 represented the governor in that case. And I
9 will note that the Supreme Court of this state
10 stayed the order to turn over those documents,
11 first and foremost.

12 Second of all, I'll note that the legislative
13 privilege is separate and apart from deliberative
14 process privilege just so we're all on the same
15 page on that.

16 But point two, though, I have not heard a
17 single exception to the deliberative process
18 privilege. I heard --

19 MR. BEN ESPY: It's not our burden.

20 THE COURT: Mr. Espy, just let him talk.

21 MR. BEN ESPY: Certainly, Your Honor.

22 THE COURT: I know it's hard for you.

23 MR. BEN ESPY: It is. It is very hard,

1 Your Honor, very hard, but I will hold my tongue.

2 THE COURT: I'm fine, but just let him
3 talk.

4 MR. BLOOM: What we have here is a case
5 applying the administrative -- the deliberative
6 process privilege rather. The Supreme Court --

7 (Brief interruption)

8 MR. BLOOM: The Supreme Court had a
9 stay. I believe it did.

10 We also have an explanation for why it
11 applies here.

12 What we're trying to get to with the
13 discovery here is, is the mental processes of a
14 deliberative body that is separate and apart from
15 discussions that occur amongst those individuals.
16 And that is what the statute is applying it to
17 here. We talked about it a little bit, but I
18 don't think anyone here would suggest there would
19 be a portion of a hearing where, now, everyone
20 sit down and tell us exactly what you're thinking
21 about every little detail. No one ever suggests
22 that.

23 And for that reason, I understand the bombast

1 from the other side; but, at the end of the day,
2 though, it's somewhat ipse dixit. If there's an
3 exception to the privilege they want to assert,
4 then assert it. But, otherwise, what we have
5 here is we don't like the fact that privilege
6 does protect it.

7 We have case law. We have the application.
8 If there's an exception based on the arguments
9 they are making, then cite the exception, but I
10 haven't heard it yet. And I don't think,
11 frankly, it exists, because, otherwise, any time
12 an administrative body gives an outcome that a
13 party doesn't like, they can simply say, well, I
14 know exactly what you're thinking. At the end of
15 the day, that would swallow the entire privilege
16 itself.

17 At the end of the day, it's all about
18 allowing deliberative process, to allow
19 individuals that think about things and ruminate
20 upon them and come to a conclusion. If every
21 element of what someone thought about was subject
22 to this, then, number one, folks would not be a
23 part of it; and, number two, everything would be

1 subject to second guessing.

2 There is an understanding that deliberative
3 bodies need that room to make those decisions.
4 That's why the process exists.

5 (Brief interruption)

6 MR. BLOOM: That's why the process
7 exists.

8 So until there is an exception cited, the
9 notion that folks may not like the fact that
10 information is withheld is really irrelevant.

11 By definition, a privilege exists because it
12 will shield otherwise relevant information. The
13 idea it would be helpful to have this information
14 is really not getting anyone anywhere.

15 That's all I have for right now.

16 MR. SOMERVILLE: Your Honor, there's not
17 a case. In spite of Mr. Bloom's flurried
18 argument, the case that was cited does not
19 recognize the privilege. It recognizes that
20 somebody asserted the privilege, and then it gave
21 relief on another entirely different ground.

22 MR. WILKERSON: Judge, if I may, once --
23 just so the record is clear, when we're talking

1 about what is public, what there is -- no
2 objection has been made available to not only the
3 other side but the general public is the
4 transcript of every meeting that they've had. We
5 know what was said and done there. That's public
6 record. It's in writing. And in most cases,
7 there are tapes of it.

8 We also have -- leading up to this vote, we
9 had a week for these integrated providers of
10 presentations where the commissioners
11 participated in a meeting fashion and asked
12 questions throughout that. That was part of
13 their deliberative process. They communicated.
14 They were there. The whole world could see that
15 on -- it was streamed to the public. That is
16 part of the record that's being accumulated as
17 part of this process that is not yet finished.

18 So -- and in addition to that, there may not
19 have been as much conversation between the
20 commissioners before they voted that the party --
21 that the losing parties desired, but there was
22 dialogue before the meeting. There was a
23 presentation -- a reminder of everything that was

1 have been made in these proceedings in some
2 recently filed pleadings that there were serial
3 meetings.

4 MR. WILKERSON: And we -- in our request
5 for protective order -- of course, we oppose
6 discovery -- but we asked the judge -- we asked
7 you -- to limit the questioning to did a serial
8 meeting occur. And that is a -- and there are
9 elements. That statute has four or five elements
10 that have to happen, period of time before the
11 meeting, you know, one commissioner has to be in
12 multiple things. And I think we could reach
13 agreement on a limited scope on that issue.

14 But that's a far cry from the
15 cross-examination about what you were thinking
16 and why you didn't consider this when you made a
17 -- either ranked the applicants on a scoring
18 sheet -- which we've agreed to provide to the
19 other side -- or actually made your vote -- a
20 motion to second and a vote during the meeting.

21 MR. SOMERVILLE: May I make a
22 suggestion? We can continue to brief this thing
23 until the cows come home, but it seems to me

1 we're really engaging in a hypothetical
2 discussion right now about what might be asked,
3 what might not be asked.

4 It seems to me they believe there's a
5 privilege or at least assert that there is a
6 privilege, although we don't know what the
7 contours of it are.

8 And like Barry was saying about the
9 attorney/client privilege, if you get into a
10 deposition and you ask questions, the lawyer says
11 that's privileged and I instruct you not to
12 answer, you might ask a couple more questions
13 about who was in the room when you were having
14 this discussion, what was the subject matter
15 generally without disclosing the substance of the
16 conversation, it seems to me that we're not going
17 to be able to really address this question until
18 we have a record developed like that.

19 THE COURT: I was thinking if we have
20 the depositions go forward and the members of the
21 commission's legal team says this is privileged,
22 you're not allowed to do it -- treat it like an
23 attorney/client privilege question -- you ask

1 your questions. Y'all get a record and certify
2 it and come back, and I'll look at it. But --

3 MR. RAGSDALE: Only thing that will
4 work.

5 THE COURT: -- I'm not going to say they
6 can ask everything, you know, in a deposition,
7 period, but it's like any other objection. And
8 I'm not going to -- I don't want a telephone call
9 during the middle of the day saying
10 commissioner -- they asked commissioner
11 so-and-so -- I'm going to allow them -- if they
12 think it's something that's a privilege, I'm
13 going to allow them to assert it. Y'all ask your
14 questions -- they're not going to be required to
15 answer -- and we can come back, and we'll go
16 through and say is this something that's
17 privileged or not.

18 MR. RAGSDALE: I mean, one other thing,
19 too, Judge. It's a privilege that can be waived.
20 Now, I know these boys aren't going to waive it,
21 but there may be some commissioners who want to
22 explain why they made their decision. I assume
23 some of them are proud of their decision.

1 If they decide they want to answer those
2 questions and there's a waiver, we don't have a
3 fight.

4 THE COURT: Right. Okay.

5 MR. SOMERVILLE: And who knows, we may
6 even get everything we think we need out of these
7 depositions even with that privilege being
8 asserted, in which case you won't have to deal
9 with us again.

10 THE COURT: Okay. I hope so.

11 All right. Let me ask one thing,
12 Mr. Jackson, length of deposition. How long is a
13 reasonable length?

14 MR. RAGSDALE: We think the Federal
15 Rules apply for seven hours for deposition. We
16 think those should apply here.

17 The real problem, of course, is we've got
18 three hundred seventy-three lawyers who want to
19 ask questions. We believe we can work out a
20 scheme by which several of us are designated to
21 take certain witnesses, and there will not be a
22 need for each lawyer to justify their per diem.
23 But we do think that seven hours is a reasonable

1 time.

2 THE COURT: Mr. Jackson.

3 MR. JACKSON: Judge, we think that
4 that's excessive and Your Honor should put a
5 limitation of fewer number of hours on it. These
6 people have jobs. I mean, I understand they
7 volunteered to be -- or were appointed and
8 accepted the position as commissioners, but I
9 don't know that they foresaw they were going to
10 be sitting in depositions for seven hours. And
11 they've got lives and they've got --

12 THE COURT: Well, the federal seven
13 hours is while you're actually testifying, too.
14 It would be like ten.

15 All right. So what would you think would be
16 a reasonable time for the actual --

17 MR. JACKSON: Four.

18 THE COURT: Four?

19 What do you say, Mr. Ragsdale?

20 MR. RAGSDALE: Are we bidding?

21 THE COURT: Yes.

22 MR. RAGSDALE: I think six hours
23 forty-five minutes.

1 THE COURT: This is not a mediation.

2 MR. BEN ESPY: Your Honor, I guess a
3 question is who is going to be allowed to
4 question, because one of the discussions we all
5 sort of had -- and we think we need some guidance
6 from you on this -- is, obviously, discovery is
7 for the preliminary injunction. There is some of
8 us who have filed preliminary injunctions and
9 some people who haven't. But I think the people
10 who haven't will probably still take the position
11 they are entitled to ask questions at these
12 depositions. And that's what's going to make
13 them longer.

14 So we kind of need some understanding from
15 you as to who you anticipate should be asking
16 questions, what group of people, everybody,
17 people with preliminary injunction hearings.
18 That might help us with the time.

19 MR. RAGSDALE: And just even a follow-up
20 to that, do some of the people who have
21 intervened on behalf of the commission get to
22 take part of our time period to use Latin phrases
23 and what-not asking questions?

1 THE COURT: If you can get through all
2 of your questioning, if there's more time, they
3 can do that.

4 MR. RAGSDALE: Okay. I don't have any
5 problem when I'm done, yes.

6 THE COURT: The issue Mr. Espy says
7 is -- I've got a feeling, Mr. Espy, you'll ask
8 him whether you're supposed or not whether it's
9 your turn or not --

10 MR. BEN ESPY: I will.

11 MR. RAGSDALE: We can probably live with
12 five for each one.

13 MR. BILL ESPY: No, Barry.

14 MR. RAGSDALE: I can't. Sorry. I can
15 live with five and then please give the Espys
16 each two more.

17 MR. BEN ESPY: Your Honor, I think maybe
18 there's some concern that if we're given seven
19 we're going to use seven. We want seven so we
20 have enough time. If we can get it done in three
21 hours, we'll stop.

22 I mean, this is a bunch of good lawyers. I'm
23 not going to go plowing into what Barry has

1 plowed in or what Will has plowed in or
2 vice-versa. I think by the time a couple of
3 these guys are done, I might have two or three
4 questions left.

5 I mean, but -- and it may be that we have to
6 get through the first deposition or two to see if
7 that's sufficient. I mean, it's a little hard to
8 determine.

9 MR. RAGSDALE: We do think the seven
10 hours in the federal rules ought to be
11 presumptive.

12 MR. ESSIG: Judge, I'll say, too, there
13 are some practical -- there are going to be some
14 practical limitations with many people and even
15 seven hours isn't very long. I don't want to
16 speak to everybody. Obviously, they'll speak up
17 and say if they disagree. Maybe some compromise
18 position like seven hours, and it's not just
19 testimony time. It's just you've got a
20 seven-hour block to take the depositions. The
21 lawyers can work together to be reasonable about
22 lunch breaks and all that. Because the other
23 thing I think --

1 MR. BILL ESPY: He hasn't talked to me
2 either.

3 MR. ESSIG: But, Judge, what I don't
4 want to do is get in a situation where we come to
5 four or five hours, and we realize in the first
6 deposition it's just impractical.

7 THE COURT: Well, here's is what I've --
8 I limited the number of depositions. You're
9 going to take -- there's six depositions y'all
10 are going to take?

11 MR. RAGSDALE: Yes, sir.

12 THE COURT: Okay. I'm going to -- we'll
13 have a seven-hour deposition limit per
14 deposition.

15 As far as designated people to ask questions,
16 that's --

17 MR. RAGSDALE: We can work that out.

18 THE COURT: Leave that up to yourselves.
19 I'll allow any intervenor, if there's time and
20 they want to ask a question, they can do that.

21 MR. RAGSDALE: And I assume there will
22 be no lengthy speaking objections. I mean, I've
23 known Mr. Jackson a long time, and --

1 THE COURT: Part of his four corner
2 strategy might be a two-hour objection.

3 MR. RAGSDALE: I agree. I agree, I need
4 to object for the next three hours.

5 MR. GREEN: There's a rule amendment
6 coming on that.

7 MR. RAGSDALE: I think we can work that
8 out with the good faith of the lawyers involved.

9 THE COURT: All right. So you've got
10 six depositions. Hopefully, they won't last that
11 long, but that's seven hours of questioning time
12 like the Federal Rule.

13 MR. RAGSDALE: Okay. Thank you, Your
14 Honor.

15 THE COURT: Mr. Green, you look like you
16 --

17 MR. GREEN: Well, only because I --
18 because the commission's motion seeking relief
19 from discovery was grounded on a claim that we
20 had not exhausted administrative remedies, I
21 think I need to put two things in the record.
22 One is the transcript of the meeting of the
23 commission from December 28th. It may have been

1 put in the record at the last hearing. I'd offer
2 that as Jemmstone Exhibit 1.

3 THE COURT: Okay.

4 MR. GREEN: Any objection?

5 THE COURT: It's in.

6 (Jemmstone Exhibit Number 1 was
7 admitted into evidence.)

8 MR. GREEN: And the other thing would
9 just simply be to cite to the Court and to
10 discuss briefly with the Court the Ex parte
11 Alabama Department of Mental Health case, which
12 if I can approach I'll provide to you. It's 207
13 So.3d 743. Mr. McKnight, who is in the building,
14 it's his case.

15 The case stands for this proposition, which
16 is that under the controlling statute in the
17 Administrative Procedures Act, Section
18 41-22-20(a), a preliminary procedural or
19 intermediate agency action or ruling is
20 immediately reviewable if review of a final
21 agency decision would not provide an adequate
22 remedy. That's what the statute says.

23 In this case, the Department of Mental Health

1 refused to impose an administrative stay over its
2 decision to revoke the license of a methadone
3 clinic. So the methadone clinic came into court.
4 And the agency said, no, you can't do that
5 because you haven't exhausted your administrative
6 remedies.

7 And the Court of Civil Appeals said because
8 the administrative agency did not impose its own
9 stay, then you can get immediate relief because
10 you cannot -- you're going to suffer irreparable
11 harm.

12 And so that's exactly what we've got in this
13 case. And so I just want to make a record for
14 the fact that there is no proper exhaustion of
15 administrative remedies argument in this case.

16 THE COURT: All right. What about the
17 written discovery issue? And I'm assuming y'all
18 want the written discovery before you take the
19 depositions.

20 MR. RAGSDALE: Yes, sir.

21 MR. GREEN: Yes.

22 THE COURT: So -- and I know the answer
23 to this question is it depends, but the question

1 is how long is the commission going to need to
2 respond to the written discovery?

3 And it depends on what I say. Are there
4 certain things that we already know? I'm looking
5 at your joint report. Let me see.

6 (Brief pause)

7 MR. WILKERSON: Judge, I can -- if it
8 may help, you know, we agreed -- the documents we
9 agreed to provide if discovery is allowed, such
10 as request for production number one, the
11 individual ranking sheets, those have already
12 been reviewed by at least one of the counsel at
13 that table. And we can make those available.

14 MR. RAGSDALE: We don't have them in
15 hand. The fact that Will looked at them doesn't
16 help us.

17 THE COURT: Well, I see that some have
18 been -- some of the requests have been withdrawn.

19 MR. RAGSDALE: Yes, sir.

20 MR. GREEN: A few.

21 THE COURT: Let's look at request four.
22 The commission agreed to answer if discovery is
23 allowed. Y'all, I imagine -- how long do you

1 need to respond to that?

2 MR. WILKERSON: I think, Judge, we would
3 probably -- the commission would -- we have a
4 sequence. Obviously, the commission has to
5 evaluate its options after this hearing. And to
6 do that, we don't know what the Court's
7 turn-around time is going to be in a written
8 order memorializing what you decided today. So
9 that's kind of -- it won't be before that,
10 because I think we have to have that order. We
11 have to see it.

12 THE COURT: Sure. You make whatever
13 decision you want to.

14 MR. WILKERSON: Whatever decision we
15 want to. But within that context, assuming that
16 discovery is going forward, identifying a list of
17 people involved in the ranking process of the
18 December 12 meeting would take no more than four
19 or five days. And that's a quick process.

20 Do you agree, Mike?

21 MR. JACKSON: Yes.

22 MR. PULLIAM: Your Honor, may it please
23 the Court.

1 THE COURT: Yes, sir.

2 MR. PULLIAM: Max Pulliam. Good
3 afternoon. I represent Emerald Standard.

4 THE COURT: Who I just let in.

5 MR. PULLIAM: And you're very kind, sir.

6 Our day was December 1. And I continue to
7 hear December 12 as being the only day that may
8 be under examination. We -- if I am not deposing
9 someone but I submit questions to some of these
10 smart lawyers --

11 THE COURT: You want them both in?

12 MR. PULLIAM: Well, our day was December
13 1. I just didn't want it to be limited to the
14 12th, Your Honor.

15 MR. JACKSON: Yes. So these requests
16 have December 6 and 12. And we were taking that
17 to be December 1 and 12.

18 MR. PULLIAM: Thank you, sir.

19 MR. JACKSON: Judge, the ones that are
20 going to take time, if -- depending upon what the
21 commission decides to do -- are going to be the
22 ones that are addressed to things that were
23 provided to the commissioner by third parties.

1 We're going to have to check with each one of the
2 commissioners.

3 They want communications, for example, texts
4 that are on their phones. They have agreed to
5 allow the commissioners themselves to look at
6 their texts and see what they may have, et
7 cetera. But we've got to get with each
8 commissioner. Those are going to take longer
9 than something like the ranking sheets. That may
10 take two weeks.

11 MR. SCHILLECI: Your Honor, Vince
12 Schilleci for CCS of Alabama, another dispensary
13 awardee.

14 And to Mr. Pulliam's point, I've heard a lot
15 about discovery today, discovery for the Open
16 Meetings Act, discovery for the meaningful review
17 argument. No dispensary plaintiff has brought up
18 either of these, either the OMA or the meaningful
19 review. They brought up essentially five
20 questions of law. I can't see why there's any
21 need for discovery at this point.

22 Again, the downstream license, the only
23 license that has not been issued, the dispensary,

1 we're getting caught up in issues that have
2 nothing to do with us.

3 Yes, he just mentioned December 1st, but in
4 every filing so far, we've talked about December
5 12th. We've talked about integrated. The
6 December 1st meeting was completely different.
7 It had different participants. It had different
8 criteria. I can't see how a dispensary still is
9 caught up in this integrated fight.

10 Your Honor, Yellowhammer, at the December
11 28th meeting, put forth a great suggestion that
12 works: Let the two go.

13 And I know I keep bringing this up, Your
14 Honor. That would be no different than what
15 happened with the cultivators. It would be no
16 different with what happened to the processors.

17 Essentially, the argument seems to be at the
18 dispensary level is all back to the Verano issue
19 again. Now, they have raised other issues, but
20 it seems to me that is the general gist of that,
21 allowing the two awardees that were awarded every
22 time puts them in no different position than they
23 are now. The status quo remains. We can

1 actually get this industry started, because
2 whether we like it or not, their --

3 THE COURT: You can't get it started
4 without any product.

5 MR. SCHILLECI: Your Honor, there is
6 product that will be available. They are growing
7 it now. They have already invested. In fact, if
8 I'm not mistaken, the dispensaries have to start
9 investing now. They have to show that they are
10 able to commence in sixty days. And so you have
11 businesses that started their business. They
12 started investing. They bought the lights. They
13 are buying the product. There will be product
14 ready, Your Honor.

15 THE COURT: Anybody -- any of the
16 dispensary plaintiffs.

17 MR. PULLIAM: Max Pulliam again for
18 Emerald.

19 Your Honor, I'd simply like to be able to
20 participate through the discovery process and ask
21 the questions that these other integrated
22 applicants want to ask. And I won't take much
23 time.

1 MR. DUNGAN: And, Your Honor, Patrick
2 Dungan for Yellowhammer Medical Dispensaries.

3 You may recall at our last hearing we had,
4 the virtual hearing, I asked for some
5 clarification because several parties had been
6 filing a joinder motion with the request for
7 discovery. And I said, Judge, I haven't filed
8 one of those. I didn't really think I needed to,
9 because I just assumed that if there was going to
10 be some discovery that all the parties would be
11 able to participate in that. And my recollection
12 is that you acknowledged that.

13 THE COURT: Yes.

14 MR. DUNGAN: So I haven't specifically
15 asked -- and I'm not trying to bog down what
16 they're trying to do in terms of the scope and
17 the number of questions they have, but I agree
18 with Mr. Pulliam that anything that specifies
19 December 12th should include December 1st as
20 well.

21 THE COURT: Okay.

22 MR. PULLIAM: Thank you, Judge.

23 THE COURT: And I'll allow y'all to

1 participate in it.

2 MR. DUNGAN: Thank you, Judge.

3 MR. BROM: Your Honor, just to give you
4 a heads up, because, fortunately, for me, I'm
5 going to be the only one in this category, but
6 Enchanted Green recently retained me. They are a
7 processor.

8 I believe they are the only ones -- they had
9 an action originally filed in November. I don't
10 believe they actually appeared here in Montgomery
11 County. I don't believe they actually served it
12 on the commission. So I'll be moving forward
13 with that. They originally were in federal
14 court. That's been dismissed. I've not been
15 involved with --

16 THE COURT: I'm so shocked that Judge
17 Marks didn't want to keep that.

18 MR. BROM: But it will be more than just
19 the integrateds because I will have a processor
20 moving forward.

21 MR. SCHILLECI: Your Honor, again, I
22 hope -- I understand the need for depositions --
23 well, actually, I don't understand the need for a

1 deposition on a question of law. And at some
2 point, they're either going to join in -- and
3 perhaps that's what that was --

4 THE COURT: Well, the problem I've got
5 is I've got to apply the facts to the law.

6 MR. SCHILLECI: I understand, Your
7 Honor.

8 THE COURT: I don't know what the facts
9 are, so --

10 MR. SCHILLECI: And I guess they've just
11 presented questions of law to you with -- I'm not
12 sure how a fact could answer a question of what's
13 the commission's interpretation at that point.

14 MR. RAGSDALE: We'll show you.

15 MR. WILKERSON: Judge, assuming
16 discovery goes forth, in instances where we've
17 said December 6th or December 12th, we will
18 provide information --

19 MR. GREEN: December 1. Sorry.
20 Scrivener's error. We'll change it to 1.

21 THE COURT: The reason I asked is you
22 need to be preparing for scheduling these matters
23 and keep the Court apprised of where you are.

1 MR. RAGSDALE: Judge, I assume we can go
2 forward with scheduling the depositions with the
3 assumption they are going to roll out their
4 answers to discovery --

5 THE COURT: Yes.

6 MR. RAGSDALE: -- assuming you don't
7 make some contrary decision that attempts to
8 stonewall us even further.

9 THE COURT: They are happy to draft a
10 contrary order.

11 All right. What else do we need to
12 straighten up?

13 MR. SOMERVILLE: I have one category I
14 want to add to discovery -- it's very limited
15 that I want to bring. I'll bring it up with them
16 before I ask the Court about it.

17 THE COURT: Does it have something to do
18 about when you start growing?

19 MR. BILL ESPY: Judge, are we still
20 going to have this hearing on February 28th or
21 are we --

22 THE COURT: It's still set.

23 MR. BILL ESPY: Okay.

1 THE COURT: You know, I -- the Court
2 wants this to go forward. I think I've said this
3 publicly. I think the public wants it and
4 deserves it, but it needs to be done right. And
5 it might be I just -- the Court will be satisfied
6 with a little more factual basis on some of these
7 allegations we have to take up.

8 All right. Anything else?

9 MR. DUNGAN: Your Honor, Patrick Dungan,
10 Southeast Cannabis Company, Yellowhammer Medical
11 Dispensaries and Pure by Sirmon Farms.

12 There was one thing that I've been discussing
13 with the commission's counsel, and I believe some
14 other similarly situated June and August awardee
15 parties have been discussing a concept of
16 severing some of our claims from this master
17 consolidated case, only the claims that relate to
18 the prior revocations of the June and August
19 awards and a very limited challenge to the
20 validity of two particular regulations, 317 and
21 318.

22 And the concept there would be we don't need
23 any discovery on any of those issues. They are

1 all straight questions of law. We believe we
2 know where they're going to land. We think we
3 know where you're going to land -- although we
4 would love for you to change your mind -- and
5 think that we could potentially tee that up for a
6 final judgment on the merits of those claims
7 sooner than we can get there with all of these
8 December issues and discovery issues and things
9 like that that are going on in this master case.

10 So we've put together a proposed motion.
11 They are reviewing it. I don't know if they've
12 really agreed to the concept yet or not, but I
13 believe that they are open to it. So we just
14 wanted to let you know that may be coming soon
15 and maybe get your thoughts on it.

16 Is that something that you think that might
17 make sense?

18 THE COURT: Well, if you think you can
19 streamline these particular issues for your
20 clients, I'm fine with that.

21 MR. DUNGAN: Well, I think it works best
22 for of the commission as well -- I won't speak
23 for them -- but I believe it works best for

1 everybody. It focuses then this master
2 consolidated case on December, and then it also
3 gets the prior revocation claims potentially in a
4 position to where they could be consolidated on
5 appeal with the existing Verano case that's on
6 appeal right now.

7 THE COURT: Well, if Mr. Main had any
8 influence, he would get an answer.

9 MR. DUNGAN: I believe Mr. Main wants us
10 to come join his party, too.

11 MR. MAIN: I'd be delighted for you to,
12 Patrick.

13 Your Honor, we've gotten a new briefing
14 schedule on that. Our brief is due the 7th of
15 February, and we maybe hope to have it filed
16 before then.

17 THE COURT: Have y'all thought about --
18 is there any amicus that's been filed?

19 MR. MAIN: We hope we have a friend or
20 two, but we haven't felt the love so far.

21 MR. DUNGAN: Well, and that's why we're
22 kind of hoping that we can speed things up a
23 little at this level on those claims if we could

1 get up in time, because we're not going to wait
2 forty-two days like he did before we appeal.

3 MR. MAIN: We didn't wait the full
4 forty-two days.

5 MR. DUNGAN: Forty-one. I'm sorry.

6 MR. MAIN: Again, not feeling the love.

7 THE COURT: It was timely.

8 MR. DUNGAN: It was timely.

9 MR. GREEN: That's your friend to the
10 Court.

11 MR. DUNGAN: So that's the concept. We
12 hope to try and get that moving soon. And the
13 concept would be there would be a new docket -- a
14 new case number. We would probably each have to
15 pay a separate filing fee. And then we come up
16 with a list of documents that we can all agree on
17 to be transferred to that case or copied to that
18 case so that they can be part of the record of
19 that case and ultimately on appeal.

20 MR. MAIN: Your Honor, if I may add one
21 thing. I'm a little intimidated, Judge, with all
22 these smart lawyers in the room, and I don't
23 profess to be one of them. As I used to say

1 about my mentor, Walter Byars, he forgot more law
2 than I'd ever know in my life. And I'm really
3 intimidated to make a comment about agency law
4 with Mr. Wilkerson in here, because, too, he's
5 forgotten more agency law than I will ever know.

6 But as I sit and listen and observe -- and I
7 keep hearing about we need to get a full record
8 when we get to the end of the investigative
9 hearing or contested case hearing, and then we
10 can bring it before Your Honor. And having
11 worked under Mr. Fox in the administrative law
12 area a little bit, I think what we've got to get
13 focused back on is what we're here challenging is
14 not the results -- which is what you're
15 challenging in the investigative hearing or
16 contested case hearing -- we're challenging the
17 process. And that's why this is all important
18 right now is we're here before Your Honor
19 challenging the process.

20 We'll have another day and opportunity to
21 challenge the results if the process is found to
22 abide with the law and rules and regulations that
23 the Legislature and the commission set forth.

1 And that's just a little simple. And I'm a
2 simple-minded guy, but I think that's where we've
3 got to get back in all these fancy arguments.

4 Thank you, Your Honor.

5 MR. RAGSDALE: You're smart. You're
6 smart.

7 MR. FOX: He said it just the way Walter
8 and I taught him.

9 THE COURT: I agree with that. I think
10 that's the one thing we've got to straighten up
11 and -- which I think where the discovery should
12 be headed --

13 MR. RAGSDALE: It is.

14 THE COURT: -- and not that so that
15 may --

16 All right. Anything else?

17 Things went a lot smoother before
18 Mr. Copeland got involved.

19 I heard you say that you might have an
20 Administrative Law Judge. Where are you going
21 find a lawyer that doesn't have a conflict?

22 All right. Anything for the good of the
23 order?

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MR. RAGSDALE: No. Thank you, Your Honor.

THE COURT: Thank you.

(Court adjourned)

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CERTIFICATE

STATE OF ALABAMA

COUNTY OF MONTGOMERY

I, Mary R. King, Official Court Reporter and Registered Merit Reporter for the 15th Judicial Circuit for the State of Alabama, Montgomery, Alabama, do hereby certify that I reported in machine shorthand the foregoing proceedings as stated in the caption hereof; that my shorthand notes were later transcribed by me or under my supervision, and that the foregoing pages contain a full, true and correct transcript of said proceedings and testimony set out herein; that I am neither kin nor of counsel to any parties in this proceeding, nor in any way interested in the results thereof.

Dated the 26th day of January, 2024.

/s/ MARY R. KING, CCR, RMR
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