



## AlaFile E-Notice

03-CV-2023-000231.00

Judge: JAMES H ANDERSON

To: CATALANO MICHAEL ANTHONY  
mccatalano@bakerdonelson.com

---

# NOTICE OF ELECTRONIC FILING

---

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

ALABAMA ALWAYS, LLC V. STATE OF ALABAMA MEDICAL CANNABIS COMMISSION  
03-CV-2023-000231.00

The following matter was FILED on 2/19/2024 11:03:25 AM

**I016 INSA ALABAMA, LLC**

MOTION TO DRAW ADVERSE INFERENCES

[Filer: RAGSDALE BARRY ALAN]

Notice Date: 2/19/2024 11:03:25 AM

GINA J. ISHMAN  
CIRCUIT COURT CLERK  
MONTGOMERY COUNTY, ALABAMA  
251 S. LAWRENCE STREET  
MONTGOMERY, AL, 36104

334-832-1260



ELECTRONICALLY FILED  
2/19/2024 11:03 AM  
03-CV-2023-000231.00  
CIRCUIT COURT OF  
MONTGOMERY COUNTY, ALABAMA  
GINA J. ISHMAN, CLERK

**STATE OF ALABAMA**  
Unified Judicial System  
03-MONTGOMERY  
Revised 3/5/08  
 District Court  Circuit Court

Cas  
CV2

ALABAMA ALWAYS, LLC V. STATE OF ALABAMA  
MEDICAL CANNABIS COMMISSION

**CIVIL MOTION COVER SHEET**  
Name of Filing Party: 1016 - INSA ALABAMA, LLC

Name, Address, and Telephone No. of Attorney or Party. If Not Represented.  
BARRY A RAGSDALE  
1130 22nd Street South, Ste 4000  
Birmingham, AL 35205  
Attorney Bar No.: RAG003

Oral Arguments Requested

**TYPE OF MOTION**

**Motions Requiring Fee**

Default Judgment (\$50.00)  
Joinder in Other Party's Dispositive Motion  
(i.e. Summary Judgment, Judgment on the Pleadings,  
or other Dispositive Motion not pursuant to Rule 12(b))  
(\$50.00)

Judgment on the Pleadings (\$50.00)

Motion to Dismiss, or in the Alternative  
Summary Judgment (\$50.00)  
Renewed Dispositive Motion (Summary  
Judgment, Judgment on the Pleadings, or other  
Dispositive Motion not pursuant to Rule 12(b)) (\$50.00)

Summary Judgment pursuant to Rule 56 (\$50.00)

Motion to Intervene (\$297.00)

Other \_\_\_\_\_  
pursuant to Rule \_\_\_\_\_ (\$50.00)

\*Motion fees are enumerated in §12-19-71(a). Fees  
pursuant to Local Act are not included. Please contact the  
Clerk of the Court regarding applicable local fees.

Local Court Costs \$ 0 \_\_\_\_\_

**Motions Not Requiring Fee**

Add Party

Amend

Change of Venue/Transfer

Compel

Consolidation

Continue

Deposition

Designate a Mediator

Judgment as a Matter of Law (during Trial)

Disburse Funds

Extension of Time

In Limine

Joinder

More Definite Statement

Motion to Dismiss pursuant to Rule 12(b)

New Trial

Objection of Exemptions Claimed

Pendente Lite

Plaintiff's Motion to Dismiss

Preliminary Injunction

Protective Order

Quash

Release from Stay of Execution

Sanctions

Sever

Special Practice in Alabama

Stay

Strike

Supplement to Pending Motion

Vacate or Modify

Withdraw

Other Motion to Draw Adverse Inferences  
pursuant to Rule \_\_\_\_\_ Rule \_\_\_\_\_ (Subject to Filing Fee)

Check here if you have filed or are filing contemporaneously  
with this motion an Affidavit of Substantial Hardship or if you  
are filing on behalf of an agency or department of the State,  
county, or municipal government. (Pursuant to §6-5-1 Code  
of Alabama (1975), governmental entities are exempt from  
prepayment of filing fees)

Date:  
2/19/2024 11:00:38 AM

Signature of Attorney or Party  
/s/ BARRY A RAGSDALE

\*This Cover Sheet must be completed and submitted to the Clerk of Court upon the filing of any motion. Each motion should contain a separate Cover Sheet.  
\*\*Motions titled 'Motion to Dismiss' that are not pursuant to Rule 12(b) and are in fact Motions for Summary Judgments are subject to filing fee.

**IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA**

**ALABAMA ALWAYS, LLC, et al.,** )  
 )  
**Plaintiffs,** )  
 )  
**v.** )  
 )  
**STATE OF ALABAMA MEDICAL** )  
**CANNABIS COMMISSION,** )  
 )  
**Defendant.** )  
 )

**Case Number: 03-CV-2023-000231**  
**(Master Consolidated Case)**

**This Motion Also Affects the Following Actions:**

- Southeast Cannabis Company, LLC v. AMCC, CV-2023-901637*
- TheraTrue Alabama, LLC v. AMCC, CV-2023-901653*
- Enchanted Green, LLC v. AMCC, CV-2023-901665*
- Yellowhammer Medical Dispensaries, LLC, CV-2023-901798*
- Pure by Sirmon Farms, LLC v. AMCC, CV-2023-901802*

**MOTION TO DRAW ADVERSE INFERENCES**

COMES NOW Insa Alabama, LLC (“Insa”), joined by co-movants Alabama Always, LLC, Jemmstone Alabama, LLC, and Bragg Canna of Alabama, LLC (collectively the “Co-Movants”), and moves this Court, pursuant to Alabama Rule of Evidence 512A(a), to draw adverse inferences against Defendant Alabama Medical Cannabis Commission (“AMCC”) and its members based upon the reliance on and invocation of any purported privilege in refusing to fully respond to discovery requests or deposition questions. As grounds in support of this motion, Insa states as follows:

1. AMCC and its members have repeatedly asserted, invoked, and refused to respond to discovery or appear for deposition based on their claim that they are immune from discovery by a purported “deliberative process privilege.” *See, e.g.*, doc. 682 at 4, doc. 860 at 2-3, Exhibit A to

doc. 874 at 28-31.<sup>1</sup> Further, AMCC has indicated that its members and representatives will refuse to answer deposition questions based on this purported privilege. *See* doc. 860 at 2-3.

2. Rule 512A(a) of the Alabama Rules of Evidence states:

(a) *Comment or inference permitted.* In a civil action or proceeding, a party's claim of a privilege, whether in the present action or proceeding or upon a prior occasion, is a proper subject of comment by judge or counsel. An appropriate inference may be drawn from the claim.

The official Comment to Rule 512A provides: "If in a civil action or proceeding comment is permissible as to the assertion of the privilege against self-incrimination, a constitutionally based privilege, then it seems reasonable to allow like comment when a party in a civil proceeding asserts any other evidentiary privilege." Comment, Ala. R. Evid. 512A. *See also* Richard Riley, *Rule 512A(a) the Banquet of Consequences Following Your Opponent's Invocation of Privilege*, 44 Ala. Ass'n Just. J. 44, 45 (2023) ("Rule 512A(a) applies across the board to all privileges asserted by all civil parties, whether the privilege is asserted by a plaintiff or a defendant.")

3. Alabama courts have relied on Rule 512A(a) to uphold the drawing of an adverse inference from a party's invocation of privilege in a civil case. *See Ex parte Ebbers*, 871 So. 2d 776, 795 (Ala. 2003) ("[T]he jury in the RSA litigation could be instructed at trial that an adverse inference could be drawn against him as a result [of invoking the privilege against self-incrimination]."); *Lester v. Lester*, No. 2210282, 2022 WL 17842771, at \*6 (Ala. Civ. App. Dec.

---

<sup>1</sup> To be clear, Insa and the Co-Movants have vigorously disputed that Alabama recognizes any such common law privilege, particularly where the Alabama Legislature has expressly declared that "[i]t is the policy of this state that the deliberative process of governmental bodies shall be open to the public . . ." Ala. Code § 36-25A-1. *See also* Ala. R. Evid. 508(b) ("*Privileges recognized under state law.* 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."). Nonetheless, AMCC has persisted in invoking the purported privilege to avoid discovery and depositions.

22, 2022) (“[T]he invocation of the right against self-incrimination may form the basis of an adverse inference against the party invoking the privilege.”).

4. AMCC’s invocation and reliance on privilege to decline to respond to discovery requests and deposition questions should result in this Court drawing an adverse inference against AMCC’s positions in this litigation. “This inference should be, at least, that the information protected within the protective cloak of the privilege, if required to be divulged, would have been in favor of the opponent and against the privilege claimant.” Gamble & Goodwin, *McElroy’s Alabama Evidence* § 421.01(2)(b) (6th ed.).

5. This Motion is fully joined in by the Co-Movants, but is being filed by Insa to eliminate the need to file separate joinders in the case.

Respectfully submitted,

/s/ Barry A. Ragsdale

Barry A. Ragsdale (RAG003)

Robert S. Vance III (VAN069)

**Dominick Feld Hyde, P.C.**

1130 22nd Street South, Suite 4000

Birmingham, AL 35203

Peck Fox (FOX005)

**The Fox Law Firm, LLC**

250 Commerce Street, Suite 200

Montgomery, AL 36104

*Counsel for Insa Alabama, LLC*

**CERTIFICATE OF SERVICE**

I hereby certify that on February 19, 2024, I filed the foregoing with the Clerk of the Court using the AlaFile system which will cause a copy to be served on all counsel of record.

/s/ Barry A. Ragsdale  
Of Counsel