



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

THERATRUE ALABAMA, LLC	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
ALABAMA MEDICAL CANNABIS	)	
COMMISSION, a State Agency; SAM	)	
BLAKEMORE, DWIGHT GAMBLE,	)	
JAMES HARWELL, TAYLOR	)	
HATCHETT, ERIC JENSEN, ANGELA	)	Case No.:
MARTIN, CHARLES PRICE, DION	)	
ROBINSON, WILLIAM SALISKI, JR.,	)	
LOREE SKELTON, STEVE STOKES,	)	
JERZY SZAFIARSKI, and REX	)	
VAUGHN, in their official capacities as	)	
Commissioners of the Alabama Medical	)	
Cannabis Commission; and JOHN	)	
MCMILLAN, in his official capacity as	)	
Director of the Alabama Medical	)	
Cannabis Commission,	)	
	)	
Defendants.	)	

**VERIFIED COMPLAINT**

Plaintiff TheraTrue Alabama, LLC (“TheraTrue”), brings this Complaint for Declaratory Judgment, Temporary Restraining Order, and Preliminary and Permanent Injunctive Relief against Defendant Alabama Medical Cannabis Commission pursuant to Alabama Code §§ 6-6-220 through 6-6-232 and § 41-22-10.

**THE PARTIES, JURISDICTION, AND VENUE**

0. Plaintiff TheraTrue is an Alabama limited liability company.

1. Defendant Alabama Medical Cannabis Commission (“AMCC”) is the State of Alabama agency that issues licenses for, and regulates, the cultivation, processing, distribution, and sale of medical cannabis in Alabama.

2. Upon information and belief, Defendant William Saliski, Jr., a Commission Member, is a resident of Montgomery County, Alabama.

3. Upon information and belief, Defendant Sam Blakemore, a Commission Member, is a resident of Jefferson County, Alabama.

4. Upon information and belief, Defendant Dwight Gamble, a Commission Member, is a resident of Henry County, Alabama.

5. Upon information and belief, Defendant Angela Martin, a Commission Member, is a resident of Calhoun County, Alabama.

6. Upon information and belief, Defendant Eric Jensen, a Commission Member, is a resident of Madison County, Alabama.

7. Upon information and belief, Defendant Loree Skelton, a Commission Member, is a resident of Jefferson County, Alabama.

8. Upon information and belief, Defendant Rex Vaughn, a Commission Member, is a resident of Madison County, Alabama.

9. Upon information and belief, Defendant Charles Price, a Commission Member, is a resident of Montgomery County, Alabama.

10. Upon information and belief, Defendant Steven Stokes, a Commission Member, is a resident of Houston County, Alabama.

11. Upon information and belief, Defendant Taylor Hatchett, a Commission Member, is a resident of Chilton County, Alabama.

12. Upon information and belief, Defendant James Harwell, a Commission Member, is a resident of Montgomery County, Alabama.

13. Upon information and belief, Defendant Jerzy Szaflarski, a Commission Member, is a resident of Jefferson County, Alabama.

14. Upon information and belief, Defendant Dion Robinson, a Commission Member, is a resident of Macon County, Alabama.

15. Upon information and belief, Defendant John McMillan, the Commission Director, is a resident of Baldwin County, Alabama.

16. This Court has jurisdiction pursuant to both Ala. Code § 6-6-222 and § 41-22-10.

17. Venue is proper in this Court because an officer of the state and an agency of the state are defendants. See Ala. Code § 41-22-11; Ex Parte Neely, 653 So. 2d 945, 946 (Ala. 1995).

### **THE FACTS**

19. TheraTrue is a 100-percent minority-owned company and is certified as a Minority-owned Business Enterprise by the Alabama Department of Economic and Community Affairs (ADECA).

20. TheraTrue seeks an “integrated facility” license pursuant to Ala. Code § 20-2A-67. An integrated facility license authorizes the license holder to cultivate, process, transport/distribute, and dispense/sell medical cannabis within the State of Alabama. Ala. Code § 20-2A-3(12).

21. Only five integrated facility licenses are authorized to be awarded by law. At least one of those licenses must be awarded to a business entity which is at least 51-percent owned (in the case of an LLC) by members of a “minority group.” Ala. Code § 20-2A-51(b). For purposes of the licensing statute, “minority group” means individuals of African American, Native American, Asian, or Hispanic descent. Id.

22. One hundred percent of the ownership of TheraTrue is African American—all three members.

23. TheraTrue spent months and hundreds of thousands of dollars preparing its application. For example, as required by the AMCC, TheraTrue purchased vehicles, applied for local business licenses, and negotiated and executed leases or lease-options on multiple properties around the state, including its planned cultivation/processing facility and several dispensary sites.

24. As part of the application process, TheraTrue reviewed the applicable statutes; the Application Guide; the “Frequently Asked Questions” Tab of the AMCC’s website; the User Guide for the online application portal (the “Portal”); the Schedule of Fees, Penalties, and Fines; and the rules pertaining to integrated license applicants.

25. None of the aforementioned materials or authorities specifies file-size limitations on the files to be uploaded as part of the online license application process through the Portal.

26. However, on Wednesday, December 28, 2022, while uploading parts of its application, TheraTrue encountered a notice on the Portal stating that file uploads were limited to 10MB in size. TheraTrue was unable to upload some of its more complex .pdf files, including a compilation of required documents that was about 10 times over the limit.

27. TheraTrue emailed the AMCC for guidance that day. The AMCC replied, “You may upload only one PDF file per exhibit and the maximum file size for each is 10 mb,” and provided completely new procedures (the “new procedures”) on how to handle files that exceeded 10MB.

28. TheraTrue began to modify its files per the new procedures in order to satisfy the 10MB limit.

29. As a result of the file-size limitations and new procedures, TheraTrue was required to expend unanticipated time and resources to compress/reduce the size of large, complex files.

30. As a result of the file-size limitations and new procedures, TheraTrue was required to degrade the quality of some of its application exhibits, to TheraTrue's competitive disadvantage.

31. On Friday, December 30, 2022, TheraTrue uploaded all files/documents necessary to submit its application through the Portal before the 4:00 p.m. deadline.

32. Just before 4:00 p.m., however, TheraTrue came to the final payment tab in the Portal and attempted, multiple times, to submit electronic payment as required by the AMCC's rules.

33. The Portal inexplicably "crashed" in that it rejected TheraTrue's multiple attempts to submit electronic payment before the application filing deadline. In rejecting payment attempts, the application portal returned errors that read, for example, "Could not process request. please try again later" or "Page Unresponsive. You can wait for it to become responsive or exit the page." (Emphasis added).

34. TheraTrue could not find any information on the cause of these errors, nor any guidance for how to resolve them, in either the Application Guide or the User Guide for the Portal. TheraTrue thus complied with the only actionable guidance it received, which was to "try gain later," but further attempts to submit payment were rejected.

35. Within minutes of the 4:00 p.m. deadline, after multiple attempts to submit payment had failed, TheraTrue compiled its "screenshots" of the errors and sent them to the AMCC through the Portal (by email to [applications@amcc.alabama.gov](mailto:applications@amcc.alabama.gov), the only authorized way to contact the AMCC at this time for this purpose) to explain the issues with the Portal and to provide payment instructions for electronic payment.

36. The AMCC replied, refusing to accept the “in lieu of payment information” provided in TheraTrue’s email and determining that TheraTrue failed to timely file its application for a license.

37. On January 4, 2023, TheraTrue submitted, by hand delivery, USB flash drives containing both redacted and unredacted versions of its application in accordance with the instructions provided at Section 1.8 of the AMCC’s Integrated Facility Application Guide, along with payment instructions for electronic payment.

38. Along with the USB flash drives and payment instructions, TheraTrue also provided an affidavit and photographic evidence explaining the technical problems that precluded successful payment through the Portal and attesting that the files on the USB flash drive had not been modified since prior to the application deadline.

39. In an email to the AMCC that same day, TheraTrue requested to be “placed back on a level playing field and have its application considered as it would have been without the crashing of the AMCC’s online portal.”

40. The AMCC accepted the flash drives and the payment instructions and issued a time-stamped receipt to TheraTrue.

41. On January 17, 2023, nearly two weeks after accepting TheraTrue’s application and payment instructions by hand delivery, the AMCC replied to TheraTrue’s email of January 4, stating that it was rejecting the application and returning the application materials to TheraTrue.

42. The basis cited by the AMCC for the rejection was an incorrect or inaccurate explanation the AMCC had received from the developer of the Portal: The AMCC stated that, based on the developer’s explanation, “the software performed consistent with its programming and design.”

43. Regardless of whether the software “performed consistent with its programming and design,” the system, in fact, prevented TheraTrue from timely submitting payment without providing any guidance or instructions on what caused the problem or how it could be resolved, other than to tell TheraTrue to wait and try again later.

44. The AMCC Rules permit an applicant to seek additional time to file an amended application under extenuating circumstances. Ala. Admin. Code § 538-X-3-.06-10 (“In the event of extenuating circumstances, an Applicant may seek permission to extend the time for filing an amendment to its application by means of a written petition to the Commission.”).

45. On February 13, 2023, TheraTrue, through counsel, sent a letter to the AMCC seeking additional guidance about how to properly petition for permission to file an Extenuating Circumstances Amended Application, as defined in AMCC Rule 538-x-3-02-9-, pursuant to Rule 538-x-3-.06-10 to -14.

46. On February 14, 2023, TheraTrue received a response from the AMCC stating that “the application amendment process (including use of Forms N and O), which is applicable only as to a previously filed application, is inapplicable as to TheraTrue.”

47. Nonetheless, TheraTrue submitted a Petition for Amendment Due to Extenuating Circumstances on March 8, 2023. The AMCC denied the Petition by email on March 9, 2023, on the same ground it had stated in its email of February 14—that “the application amendment process ... is inapplicable as to TheraTrue.”

48. TheraTrue had exhausted its administrative remedies under the AMCC’s Rules and Regulations when it received the AMCC’s response on February 14 that “the application amendment process ... is inapplicable as to TheraTrue” because it had “fail[ed] to file an application.”

49. Because the AMCC will not consider TheraTrue's Integrated Facility License Application, TheraTrue cannot be considered alongside other applicants for a cannabis integrated facility license.

**COUNT I: DECLARATORY RELIEF UNDER ALA. CODE § 6-6-222**

50. TheraTrue realleges, adopts, and incorporates the allegations in all previous paragraphs as if fully set forth herein.

51. Through the Portal, as required, TheraTrue uploaded its application for an integrated license and supporting documentation before the application deadline, with the exception of electronic payment, which TheraTrue attempted to make before the deadline.

52. TheraTrue was precluded by the Portal from making electronic payment either because the Portal "crashed;" because of a "bug" in the programming; because of a network or server issue; because of some aspect of the Portal's "programming or design" that was never communicated to TheraTrue by the Portal, its developer, or the AMCC; or because of some other technological problem, the solution for which TheraTrue could not have known before the deadline and had no reason to know before the deadline.

53. TheraTrue exercised good faith and reasonable efforts in attempting to complete electronic payment prior to the deadline, but was precluded from submitting payment.

54. AMCC Rule 538-x-3-.02-1 specifically allows for amended applications on an applicant's own initiative to "correct errors, to more accurately reflect facts relating to the proposed business, to generally revise and improve the quality of its previously filed application to the Commission, or for any other valid purpose." Ala. Admin. Code § 538-x-3-.02-1 (emphasis added).



55. Payment of the application fee is a “valid purpose” for amending an application due to extenuating circumstances. See Ala. Admin. Code § 538-x-3-.05-3.

56. Likewise, AMCC Rule 538-x-3-.08 recognizes that the AMCC may issue a Notice of Deficiency to “any Applicant whose original or amended application filing is deficient” and allow it time to correct that deficiency. See Ala. Admin. Code § 538-x-3-.08. It provides a non-exhaustive list of curable deficiencies, including “corrupted or illegible file materials, incomplete applications, improperly formatted or labeled materials, typographical errors preventing reasonable understanding of one of more of the Applicants’ statements.” Id. (emphasis added).

57. While an Applicant’s inability to submit payment through the Portal is not expressly included in this list, it does fall within the category of deficiencies of “incomplete applications” that can be cured. See AMCC Rule 538-x-3-.05-3(q).

58. Nonetheless, the AMCC refused to consider TheraTrue’s Application at all, much less allow TheraTrue an opportunity to cure this deficiency or file an Extenuating Circumstances Amended Application.

59. Because the Rules permit Applicants to “generally revise and improve the quality of... previously filed application[s]” for any “valid purpose” on their own initiative, AMCC Rule 538-x-3-.02-1, and to cure Commission-identified deficiencies based on “incomplete applications,” AMCC Rule 538-x-3-.08, TheraTrue should be allowed to pay the application fee that it was precluded by the Portal from paying.

60. The time lost during (1) TheraTrue’s modification of files to satisfy the 10MB file-size limit and (2) TheraTrue’s repeated but unsuccessful attempts to make payment before the deadline represents another “extenuating circumstance” (as defined by AMCC Rule 538-x-3-.02-9) that would justify the filing of an Extenuating Circumstances Amended Petition.

61. But for the time lost to TheraTrue while attempting to satisfy file-size limitations and make payment before the deadline, TheraTrue would have had time, before the deadline, to correct, amend, or revise other aspects/components of its application. Therefore, TheraTrue should also be allowed to “correct errors, to more accurately reflect facts relating to the proposed business” and “to generally revise and improve the quality” of its application through the filing of an Extenuating Circumstances Amended Petition. AMCC Rule 538-x-3-.02-1.

62. Given the AMCC’s stated position that TheraTrue never submitted an application at all, the AMCC Rules do not provide any procedure whereby TheraTrue may seek an administrative remedy. TheraTrue cannot even avail itself of the opportunity to seek reconsideration through a hearing before the Commission pursuant to AMCC Rule 538-x-3-.18 because TheraTrue is not considered by the AMCC to be an “Applicant who has been denied a license by the Commission.”

**WHEREFORE**, TheraTrue prays that a judgment be entered in its favor declaring:

- 1) That TheraTrue timely submitted its Application for an integrated facility license and is an Applicant.
- 2) That the file-size limitations imposed by the Portal without prior notice to applicants, as well as the time lost by TheraTrue in modifying its files according to new procedures in order to satisfy the Portal’s file-size limitations, constitute “extenuating circumstances” for which TheraTrue is entitled to file an Extenuating Circumstances Amended Application.
- 3) That the Portal’s rejection of TheraTrue’s repeated attempts to make payment before the application deadline, as well as the time lost by TheraTrue in making such attempts, are “extenuating circumstances” for which TheraTrue is entitled to file an Extenuating Circumstances Amended Application.
- 4) That the Portal’s rejection of TheraTrue’s repeated attempts to make payment before the application deadline created a “deficiency” within the meaning of AMCC Rule 538-x-3-.02-8 for which TheraTrue is entitled to a Notice of Deficiency and an opportunity to cure.

- 5) That TheraTrue is entitled to all rights afforded to Applicants who timely filed their Applications.

TheraTrue further prays that the Court award TheraTrue costs, interest, and any other equitable and/or legal relief to which it is entitled.

**COUNT II: DECLARATORY RELIEF UNDER ALA. CODE § 41-22-10**

63. TheraTrue realleges, adopts, and incorporates the allegations in all previous paragraphs as if fully set forth herein.

64. The Alabama Administrative Procedures Act (AAPA) permits "[t]he validity or applicability of a rule" to "be determined in an action for a declaratory judgment." Ala. Code § 41-22-10.

65. The 10MB file-size limit imposed by the Portal, and the “new procedures” given to TheraTrue on December 28, 2022, are rules within the meaning of Ala. Code § 41-22-3 which are subject to the requirements of the AAPA.

66. These rules are invalid because the Commission failed to comply with the AAPA's basic minimum procedural requirements:

- a. The Commission failed to provide notice of the rules.
- b. The Commission failed to request and receive comments on the rules.
- c. The Commission adopted the rules without substantial compliance with the AAPA's rulemaking procedures.

67. The rules interfere with and impair TheraTrue’s legal rights in that the imposition of these rules cost TheraTrue precious time in the process of submitting a complete application before the deadline and have ultimately cost TheraTrue the opportunity to compete for an integrated facility license.

**WHEREFORE**, TheraTrue prays that a judgment be entered in its favor declaring:

- 1) That TheraTrue timely submitted its Application for an integrated facility license and is an Applicant.
- 2) That the 10MB file-size limitation and the “new procedures” given to TheraTrue on December 28, 2022, are invalid.
- 3) That the 10MB file-size limitation imposed by the Portal without prior notice to applicants, as well as the time lost by TheraTrue in modifying its files according to new procedures, constitute “extenuating circumstances” for which TheraTrue is entitled to file an Extenuating Circumstances Amended Application.
- 4) That TheraTrue’s inability to upload files larger than 10MB created “deficienc[ies]” within the meaning of AMCC Rule 538-x-3-.02-8 for which TheraTrue is entitled to a Notice of Deficiency and an opportunity to cure.

TheraTrue further prays that the Court award TheraTrue costs, interest, and any other equitable and/or legal relief to which it is entitled.

### **COUNT III: TEMPORARY RESTRAINING ORDER**

68. TheraTrue realleges, adopts, and incorporates the allegations in all previous paragraphs as if fully set forth herein.

69. To obtain a Temporary Restraining Order (TRO), the plaintiff must show: (1) without the TRO the plaintiff would suffer immediate and irreparable injury; (2) the plaintiff has no adequate remedy at law; (3) the plaintiff has at least a reasonable chance of success on the ultimate merits of his case; and (4) the hardship imposed on the defendant by the TRO would not unreasonably outweigh the benefit accruing to the plaintiff. Lott v. E. Shore Christian Ctr., 908 So. 2d 922, 927 (Ala. 2005).

70. TheraTrue is irreparably harmed or threatened with irreparable harm if the Court does not enter a TRO ordering and directing Defendant AMCC to deem TheraTrue’s Application timely submitted. Without a TRO, the AMCC will not permit TheraTrue to make the required payment or amend its application, and the AMCC will not consider TheraTrue’s Application for

an integrated facility license along with the other Applications, thereby preventing TheraTrue from competing for a license.

71. TheraTrue has no adequate remedy at law because the injury is not easily or readily quantifiable in terms of money damages. The value of a license allowing TheraTrue to legally cultivate, process, transport, and sell/dispense cannabis in the State of Alabama is not readily ascertainable because the legal cannabis market in Alabama is just emerging.

72. TheraTrue has at least a reasonable chance of success on the merits. As detailed above, TheraTrue has a reasonable chance of success on the underlying declaratory judgment actions. TheraTrue uploaded its Application materials in compliance with the deadline as contemplated by the AMCC Rules. Although TheraTrue was unable to submit its electronic payment before the deadline, this does not render TheraTrue's Application moot under the AMCC Rules. Therefore, the AMCC's refusal to consider TheraTrue's Application is inconsistent with its own Rules regarding Application requirements.

73. The benefit to TheraTrue from a TRO would not unreasonably outweigh the hardship imposed on the AMCC. If the AMCC is required to consider TheraTrue's Application timely submitted, the AMCC faces only the minimal hardship associated with reviewing an additional Application. On the other hand, TheraTrue faces significant harm because it will not be considered for an integrated facility business license, which is necessary for TheraTrue to be able to conduct business in the state.

74. Moreover, a TRO would actually benefit the AMCC and the public by ensuring greater competition, especially in the category of minority-owned business enterprises applying for an integrated facility license.

**WHEREFORE**, TheraTrue seeks a TRO staying enforcement of the 10MB file-size limitation and new procedures against TheraTrue and ordering Defendant AMCC to:

- a. Deem TheraTrue's Application submitted before the December 30, 2022, deadline;
- b. Accept TheraTrue's payment for the requisite application fee;
- c. Allow TheraTrue to abide by the AMCC Rules and Regulations applicable to other Applicants, including those Rules allowing an Applicant to file an Extenuating Circumstances Amended Application and to cure any deficiencies identified by the Commission; and,
- d. If necessary, modify its timeline for reviewing Applications and issuing licenses in order to abide by the Court's order.

**COUNT IV: PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF**

75. TheraTrue realleges, adopts, and incorporates the allegations in all previous paragraphs as if fully set forth herein.

76. Under Alabama law, "the elements required for the issuance of a TRO are the same as the elements required for the issuance of a preliminary injunction." Lott, 908 So. 2d at 927.

77. As discussed above, TheraTrue has a reasonable chance of success on the merits herein. TheraTrue is entitled to declaratory relief because its legal rights are affected by the AMCC's refusal to consider its Application in spite of the AMCC Rules and Regulations.

78. TheraTrue faces immediate and irreparable harm without injunctive relief. Specifically, TheraTrue is threatened with injury if the AMCC is not ordered to consider TheraTrue's Application timely submitted because TheraTrue will not be considered.

79. TheraTrue has no adequate remedy at law because the injury is not easily or readily quantifiable in terms of money damages. The value of a license allowing TheraTrue to legally cultivate, process, transport, and sell/dispense cannabis in the State of Alabama is not readily ascertainable because the legal cannabis market in Alabama is just emerging.

80. TheraTrue will provide an injunction bond in such sum as the Court deems proper.

81. An injunction is necessary and proper pursuant to Alabama Code § 6-6-230, the inherent power of this Court, and this Court's statutory injunction authority.

82. The harm to TheraTrue by the AMCC's denial of its opportunity to be considered for a cannabis business license, and the harm to the public by reducing competition, especially in the category of minority-owned business enterprises seeking an integrated facility license, outweighs any harm injunctive relief may cause the AMCC.

**WHEREFORE**, TheraTrue Alabama, LLC, respectfully requests that the Court enter an order consistent with the requests set forth above.

*/s/ Steven M. Brom*

Steven M. Brom (BRO202)

Attorney for Plaintiff TheraTrue Alabama, LLC

OF COUNSEL:

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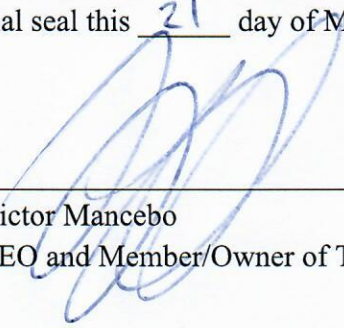
Fax: (205) 970-7776

E-mail: sbrom@bachusbrom.com

**VERIFICATION**

In accordance with Alabama Rule of Civil Procedure 65(b), Victor Mancebo, the Chief Executive Officer and a Member/Owner of TheraTrue Alabama, LLC, being first duly sworn in accordance with the law, being informed of and familiar with the facts set forth and the statements made in the foregoing complaint, which sets forth specific facts that immediate and irreparable injury, loss, or damage will result, makes oath that the foregoing averments are true to the best of its knowledge and, where stated, by information and belief.

Given under my hand and official seal this 21 day of March, 2023.

  
\_\_\_\_\_  
Victor Mancebo  
CEO and Member/Owner of TheraTrue Alabama, LLC

STATE OF Florida

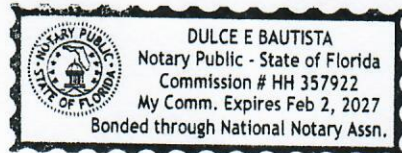
COUNTY OF Broward

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



NOTARY PUBLIC

My Commission Expires: 02/02/2027 [SEAL]





**CERTIFICATE OF SERVICE**

The Defendants will be served through private process server:

Alabama Medical Cannabis Commission  
800 S McDonough Street, Suite 105  
Montgomery, Alabama 36104

William Saliski, Jr.  
Sam Blakemore  
Dwight Gamble  
Angela Martin  
Eric Jensen  
Loree Skelton  
Rex Vaughn  
Charles Price  
Steve Stokes  
Taylor Hatchett  
James Harwell  
Jerzy Szaflarski  
Dion Robinson  
John McMillan