

1 Gina M. Austin (SBN 246833)
E-mail: *gaustin@austinlegalgroup.com*
2 Tamara M. Leetham (SBN 234419)
E-mail: *tamara@austinlegalgroup.com*
3 AUSTIN LEGAL GROUP, APC
3990 Old Town Ave, Ste A-112
4 San Diego, CA 92110
Phone: (619) 924-9600
5 Facsimile: (619) 881-0045

6 Attorneys for Defendants
Point Loma Patients Consumer Cooperative,
7 Golden State Greens, LLC, Far West Management, LLC
Far West Operating, LLC, and Far West Staffing, LLC

8 MATTHEW B. DART (Bar No. 216429)

DART LAW

9 12526 High Bluff Dr., Suite 300
10 San Diego, CA 92101
Tel: 858.792.3616
11 Fax: 858.408.2900

12 Attorneys for Defendants 419 Consulting,
Adam Knopf, and Justus Henkes IV

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **COUNTY OF SAN DIEGO**

15
16 KARL BECK, individually and on behalf
17 of all other similarly situated California
residents,

18 Plaintiff,

19 vs.

20 POINT LOMA PATIENTS CONSUMER
21 COOPERATIVE CORPORATION, a
California corporation, ADAM KNOPF, an
22 individual, JUSTUS H. HENKES IV, an
individual, 419 CONSULTING INC, a
23 California corporation, GOLDEN STATE
GREENS LLC, a California LLC, FAR
24 WEST MANAGEMENT LLC, a
California LLC, FAR WEST
25 OPERATING, LLC, a California LLC,
FAR WEST STAFFING LLC, a California
26 LLC, and DOES 1-50;

27 Defendants.
28

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County of San Diego

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CASE NO. 37-2017-00037524-CU-BT-CTL

CLASS ACTION

**DEFENDANTS' MEMORANDUM OF
POINTS AND AUTHORITIES IN
OPPOSITION TO PLAINTIFF'S MOTION
FOR JUDGMENT ON THE PLEADINGS
TO DEFENDANTS' JOINT ANSWER**

Judge: Hon. Joel Wohlfeil

Dept.: C-73

Date: May 4, 2018

Time: 9:00 a.m.

Complaint Filed: October 6, 2017

Trial Date: March 1, 2019

1 Defendants Point Loma Patients Consumer Cooperative Corporation, Adam Knopf, Justus
2 H. Henkes, IV, 419 Consulting Inc., Golden State Greens, LLC, Far West Management, LLC, Far
3 West Operating, LLC, and Far West Staffing LLC (collectively, “Defendants”) respectfully
4 submit this memorandum of points and authorities in opposition to plaintiff Karl Beck's
5 (“Plaintiff”) Motion for Judgment on the Pleadings to Defendants’ Joint Answer (the “Motion”).

6 **I. INTRODUCTION**

7 Plaintiff’s complaint alleges five causes of action, four of which are operative¹: (1) Production
8 of Records Pursuant to Corp. Code §§ 12603-12607; (2) Unfair Competition Law; (3) Consumer Legal
9 Remedies Act; and (4) Conversion. Defendants jointly answered the complaint on February 8,
10 2018, with a general denial and affirmative defenses which reasonably appeared to be relevant to
11 the claims asserted against them (the “Joint Answer”). Plaintiff did not demurrer to Defendants’
12 Joint Answer within the time allowed. Weeks later, however, Plaintiff filed the instant motion for
13 judgment on the pleadings, attacking fifteen of the sixteen affirmative defenses stated in
14 Defendants’ Joint Answer. Plaintiff’s motion requests that the Court dismiss *twelve* of the sixteen
15 defenses *without leave to amend*.

16 Plaintiff’s attempt to dispose of Defendants’ affirmative defenses by motion for judgment
17 on the pleadings is overreaching, premature and unsupported by law and facts. Plaintiff is
18 attempting to derail Defendants’ ability to investigate and defend themselves without providing
19 Defendants an adequate opportunity to conduct the necessary discovery. Defendants’ general
20 denial pursuant to Code of Civil Procedure section 431.30 has the unquestioned effect of placing
21 each and every material allegation of Plaintiff’s complaint at issue. Defendants’ affirmative
22 defenses meet the required pleading standard and provide Plaintiff with sufficient notice of the
23 defenses at issue. Defendants are not required to plead their defenses with heightened
24 specificity. Therefore, Defendants’ Joint Answer is proper and accordingly Plaintiff’s Motion
25 should be denied in its entirety. Nonetheless, should the Court grant any part of the Motion,
26 Defendants request leave to amend.

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¹ The Court dismissed Plaintiff’s “Unjust Enrichment” claim without leave to amend on Defendants’ demurrer.

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2 **II. DEFENDANTS' ANSWER SHOULD BE LIBERALLY CONSTRUED**

3 Plaintiff's Motion misunderstands the pleading requirements for an answer. First, Code of
4 Civil Procedure section 452 mandates that courts, when evaluating the effect of a pleading,
5 construe the allegations of the pleading liberally, with a view to substantial justice between the
6 parties. Code Civ. Proc. § 452. "[T]he policy of the law is to construe pleadings liberally to the
7 end that cases will be tried on their merits rather than disposed of on technicalities of pleadings."
8 *Porten v. University of San Francisco* (1976) 64 Cal.App.3d 825, 833. Thus, in reviewing a
9 pleading in response to a demurrer², courts must accept as true not only those facts alleged but
10 also facts that may be implied or inferred from those expressly alleged. *Trinity Park, L.P. v. City*
11 *of Sunnyvale* (2011) 193 Cal.App.4th 1014, 1026 (citation omitted). An answer is afforded the
12 same liberal construction as a complaint, and as such, Defendants' Joint Answer should be read
13 liberally in favor of finding its affirmative defenses sufficiently pled. *See Gressly v. Williams*
14 (1961) 193 Cal.App.2d 636, 639 (stating that pleadings that show some right to relief will
15 withstand a demurrer even though the facts are not clearly stated).

16 Second, there is simply no support for the heightened pleading standard demanded by
17 Plaintiff. A court's role in adjudicating a demurrer to an answer is simply to determine "whether
18 the answer raises a defense to the plaintiff's stated cause of action." *Timberidge Enters., Inc. v.*
19 *City of Santa Rosa* (1978) 86 Cal.App.3d 873, 879-80. At this early stage of the proceedings,
20 Defendants need not plead each and every fact upon which they intend to rely, particularly when
21 Defendants have not had the benefit of full discovery. Thus, following a general denial,
22 Defendants' answer may simply plead "ultimate facts sufficient to constitute a defense," and the
23 answer must be read with reference to the complaint. *South Shore Land Co. v. Petersen* (1964)
24 226 Cal.App.2d 725, 734-36.

25 Third, Defendants are only required to provide Plaintiff with fair notice of the defenses,
26 not plead allegations supporting every element of their affirmative defenses. *Hata v. Los Angeles*
27 *County Harbor/UCLA Med. Ctr.* (1995) 31 Cal.App.4th 1791, 1805-06; *Perkins v. Super. Ct.*

28 _____
² A demurrer is functionally equivalent to a motion for judgment on the pleadings, differing only in terms of timing.

1 (1981) 117 Cal. App. 3d 1, 6 (holding that it is most important that a pleading contain sufficient
2 allegations to apprise the other party of the basis upon which the pleading party is seeking relief).
3 The question of a parties' ability to prove the allegations is of no concern when ruling on a
4 demurrer. *Committee on Children's Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d
5 197. The affirmative defenses in Defendants' Joint Answer are more than adequate to satisfy this
6 lenient pleading standard. A defense must only allege such facts necessary to put the plaintiff on
7 notice of the claims or defenses against him. A litigant "is required only to set forth the essential
8 facts of his case with reasonable precision and with particularity sufficient to acquaint [the
9 opposing party] with the nature, source and extent of his [claims or defenses]." *Ludgate Ins. Co.*
10 *Ltd. v. Lockheed Martin Corp.* (2000) 82 Cal.App.4th 592, 608 (citation omitted). In fact,
11 "[t]here is no need to require specificity in the pleadings because 'modern discovery procedures
12 necessarily affect the amount of detail that should be required in a pleading.'" *Id.* (citation
13 omitted).

14 Defendants' Joint Answer is more than sufficient to put Plaintiffs on notice of the
15 defenses at issue. Indeed, a number of affirmative defenses raise purely legal issues and require
16 no further "factual" allegations. For example, Affirmative Defenses One (Failure to State a
17 Cause of Action); Eight (Affirmative Defenses Extend to Each Class Member); Nine (Class
18 Action Unconstitutional); Twenty (Punitive Damages Unconstitutional); and Seventeen
19 (Reservation of Additional Defenses).

20 **III. DEFENDANTS' GENERAL DENIAL PUT THE RELEVANT FACTS AT** 21 **ISSUE AND IN CONTROVERSY**

22 A general denial acts as a blanket denial of the entire complaint such that the defendant
23 has denied each and every allegation in plaintiff's complaint. *Walsh v. West Valley Mission*
24 *Comm. College Dist.* (1998) 66 Cal.App.4th 1532, 1545. When a general denial is filed against a
25 complaint for breach of contract, for example, the general denial acts to deny that there is a
26 contract, that plaintiff performed or had an excuse for nonperformance, that defendant did not
27 perform or that plaintiff was damaged. *Id.* A general denial "puts in issue the material
28 allegations of the complaint." Code Civ. Proc. § 431.30(d).

1 When a defendant asserts affirmative defenses in addition to a general denial the
2 defendant is only required to specifically plead those matters which are considered “new
3 matters.” *California Academy of Sciences v. County of Fresno* (1987) 192 Cal.App.3d 1436,
4 1442. Facts showing some essential allegation of the complaint is not true are not considered
5 “new matter.” *State Farm Mut. Auto Ins. Co. v. Sup. Ct.* (1991) 228 Cal.App.3d 721, 725.
6 Accordingly, such matters are in issue under a general denial such that they need not be
7 specifically pled in the answer. *Id.* at 725. Stated alternatively, defenses which tend to disprove
8 Plaintiff’s claims, i.e., in a bad faith case where the defense shows the insurance company had
9 proper cause for denying coverage, need only be pled in general terms. *Id.*

10 Here, Defendants’ general denial put at issue all of the material facts pled by Plaintiff.
11 Therefore “new matter” is either not required to be alleged, or has been sufficiently alleged, for
12 defenses No. One (each claim fails to state facts sufficient to constitute a cause of action), Six
13 (Plaintiff lacks standing [because he is not a member of PLPCC, as alleged in the Answer], Seven
14 (Defendants’ business practices were not unlawful), Eight (Class treatment improper), Twelve
15 (Compliance with Applicable Law), Fifteen (Estoppel because Plaintiff is not a member of
16 PLPCC), and Sixteen (No recovery on conversion because no converted property is specifically
17 identifiable).

18 **IV. DISCOVERY WILL YIELD ADDITIONAL SUPPORTING FACTS**

19 To the extent that Plaintiff seeks additional facts supporting the ultimate facts already
20 alleged in Defendants’ affirmative defenses, his recourse is to engage in discovery instead of
21 engaging in wasteful motion practice in an ill-conceived attempt to manufacture a heightened
22 pleading standard for Defendants. It is well settled that modern discovery has largely eliminated
23 the need for specificity in pleadings. *See, e.g., Semole v. Sansoucie* (1972) 28 Cal.App.3d 714,
24 719 (“modern discovery procedures necessarily affect the amount of detail that should be required
25 in a pleading”); *Ludgate Ins. Co.*, 82 Cal. App. 4th at 608 (“There is no need to require specificity
26 in the pleadings because modern discovery procedures necessarily affect the amount of detail that
27 should be required in a pleading.”); *Dahlquist v. State of Cal.* (1966) 243 Cal.App.2d 208, 212
28 (“And apropos discovery, we find in this modern method of fact-ascertainment reason for some

1 relaxation of rigidity in application of the rules relating to the sufficiency of complaints [A
2 litigant] by depositions, interrogatories, requests of admission, etc., can ascertain every fact
3 known to plaintiffs and their witnesses. So can plaintiffs inquire of the [defendant]. That is the
4 purpose of discovery.”). Plaintiffs may avail themselves of such discovery without burdening this
5 Court with a motion for judgment on the pleadings.

6 Indeed, the Judicial Council Form Interrogatory 15.0, “Denials and Special or Affirmative
7 Defenses,” acknowledges the propriety of using discovery to acquire more detailed information
8 about a party’s affirmative defenses. Form Interrogatory 15.0 states:

9 Identify each denial of a material allegation and each special or
10 affirmative defense in your pleadings and for each: (a) state all
11 facts upon which you base the denial or special or affirmative
12 defense; (b) state the names, addresses, and telephone numbers of
13 all persons who have knowledge of those facts; and (c) identify all
documents and other tangible things that support your denial or
special or affirmative defense, and state the name, address, and
telephone number of the person who has each document.

14 In this case, Plaintiff served a 15.0 form interrogatory on Defendants, but he filed the
15 instant Motion *before* the responses were due. Once the Motion is determined, Defendants will
16 be in a position through discovery to provide more facts than Plaintiff would be entitled to by
17 motion for judgment on the pleadings.

18 **V. DEFENDANTS MAY ASSERT EQUITABLE DEFENSES TO PLAINTIFF’S
UCL CLAIMS**

19 UCL claims are actions in equity. *Prudential Home Mortgage Co. v. Superior Court*
20 (1998) 66 Cal.App.4th 1236, 1249; *Dean Witter Reynolds, Inc. v. Superior Court* (1989) 211
21 Cal.App.3d 759. “[I]t is axiomatic that one who seeks equity must be willing to do equity.”
22 *Cortez v. Purolator Air Filtration Products* (2000) 23 Cal.4th 163 citing *Farmers Ins. Exchange*
23 *v. Zerin* (1997) 53 Cal.App.4th 445, 453. Yet Plaintiff’s Motion argues that equitable defenses
24 are not applicable to Plaintiff’s unlawful UCL claims and thus seeks judgment on those six
25 affirmative defenses, without leave to amend. Plaintiff’s own citations, however, undercut his
26 argument.

27 Plaintiff primarily relies on *Cortez v. Purolator Air Filtration Products* as California
28 Supreme Court authority for the proposition that equitable defenses are not available for UCL

1 claims. That case – a labor class action – does not so broadly hold. *Cortez* was also not a
2 pleadings challenge case, but rather arises out of class certification proceedings. In *Cortez* the
3 defendant asserted defenses of “laches, good faith, waiver and estoppel.” *Cortez v. Purolator Air*
4 *Filtration Products, supra*, 23 Cal.4th at 179. “We also conclude that, while the Court of Appeal
5 correctly rejected defendant’s statute of limitations claim, equitable considerations may guide the
6 court in fashioning the appropriate remedy in a UCL action.” *Id.* at 168. “Therefore, in addition
7 to those defenses which might be asserted to a charge of violation of the statute that underlies a
8 UCL action, a UCL defendant may assert equitable considerations.” *Id.* at 180-181.

9 Moreover, the Motion mischaracterizes Plaintiff’s UCL claim as premised solely on
10 “California medical marijuana laws and the California Corporations Code.” (Motion, 5:3-4). The
11 Complaint, however, specifically premises the UCL claims on, *inter alia*, “Defendants’ violations
12 of the CLRA as complained of herein, constitute “unlawful” business practices within the
13 meaning of the UCL.” (Complaint, ¶ 69 [within UCL Cause of Action].) The CLRA claim
14 alleges Defendants misrepresented the affiliation, connection or association of the products sold.
15 (Complaint, ¶ 80.) It is both plausible and logical that, even assuming those allegations are true,
16 Plaintiff waived or consented or otherwise is estopped from asserting claims against Defendants
17 based on those allegations. In other words, even if unavailable under other fact patterns,
18 equitable defenses are validly alleged with respect to Plaintiff’s UCL claims *in this case*.

19 **IV. THE DEFENSES ARE NOT UNCERTAIN, AMBIGUOUS AND** 20 **UNINTELLIGIBLE**

21 Plaintiff offers a general objection that the Second, Third, Fourth, Fifth, Tenth, Eleventh,
22 Thirteenth and Fourteenth affirmative defenses are so “uncertain, ambiguous, and unintelligible”
23 that they must be dismissed. (Motion, at 5:13.) But the standard on a demurrer (or motion for
24 judgment on the pleadings) for uncertainty is strict. *Khoury v. Maly’s of Cal., Inc.* (1993) 14
25 Cal.App.4th 612, 616. A demurrer should be overruled even if a pleading is uncertain in some
26 respects because any perceived ambiguities can be clarified through discovery procedures. *Id.*
27 Further, a demurrer on the basis that affirmative defenses are “uncertain” is a special demurrer
28 and thus must be overruled unless the demurrer specifically points out exactly how or why the

1 pleading is uncertain. *Coons v. Thompson* (1946) 75 Cal.App.2d 687, 690; *Fenton v. Groveland*
2 *Comm. Srvs Dist.* (1982) 135 Cal.App.3d 797, 809 (the demurrer should state where in the
3 pleading the uncertainty exists by referencing page and line), *disapproved on other grounds*,
4 *Katzberg v. Regents of Univ. of Cal.* (2002) 29 Cal.4th 300, 312-13.

5 Plaintiff fails to satisfy these requirements. Each of the affirmative defenses sets forth in
6 plain language the legal basis for the defense. Several affirmative defenses raise a number of
7 factual issues. Further, each affirmative defense must be read in context to Plaintiffs' own
8 Complaint. Plaintiff is the master of his pleadings and is thus presumably familiar with the
9 allegations set forth in his own complaint. Accordingly, any professed ignorance regarding the
10 legal effect of any affirmative defense is disingenuous.

11 Further, as noted above, any professed doubt regarding the basis of any affirmative
12 defense may be resolved through discovery. The discovery process – not a pleading challenge –
13 is the proper mechanism for conducting fact-finding. *Piscioneri v. City of Ontario* (2002) 95
14 Cal.App.4th 1037, 1049-50 (affirming trial court decision to not review merits of affirmative
15 defense until case had been “factually developed.”).

16 **V. AT A MINIMUM DEFENDANTS SHOULD BE GRANTED LEAVE TO**
17 **AMEND**

18 Defendants have adequately pled their affirmative defenses. Nevertheless, in the event
19 that the Court concludes any defenses are insufficient, Defendants respectfully request leave to
20 amend to plead additional allegations. *Stevens v. Super. Ct.* (1999) 75 Cal.App.4th 594,
21 601 (where there is a reasonable possibility that the defects in a pleading can be cured by
22 amendment, leave to amend must be granted). As with demurrers to complaints, such leave
23 should be liberally granted. It is error and abuse of discretion for the court to deny leave to
24 amend where there is any reasonable possibility that a party can state a valid defense. *Aubry v.*
25 *Tri-City Hosp. Dist.* (1992) 2 Cal.4th 962, 967; *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.

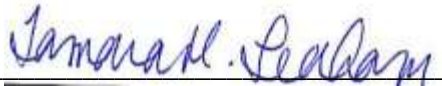
26 **VI. CONCLUSION**

27 Defendants' Joint Answer put all material allegations of Plaintiff's Complaint in issue and
28 in controversy. The affirmative defenses raised by Defendants are related to one or more claims

1 asserted by Plaintiff. For the foregoing reasons, Plaintiff's Motion should be denied in its
2 entirety. Should the Court deem the Motion to have merit then Defendants asks this Court for the
3 opportunity to amend the Answer to adhere to the ruling of this Court.
4


5 Dated: April 23, 2018

AUSTIN LEGAL GROUP, APC

6
7 By: 
8 Gina M. Austin/Tamara Leetham,
9 Attorneys for PLPCC, Far West Operating,
10 Far West Expansion, Far West Staffing,
and Golden State Greens

11 Dated: April 23, 2018

DART LAW

12
13 By: 
14 MATTHEW B. DART
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16 Justus Henkes, and 419 Consulting, Inc.
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