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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**

**DEFENDANTS MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
OPPOSITION TO PLAINTIFF'S MOTION  
TO COMPEL PRODUCTION OF  
DOCUMENTS**

*[Concurrently filed with Separate Statement and  
Declaration of Tamara Leetham]*

[Imaged File]

Judge: Hon. Joel Wohlfeil  
Dept.: 73  
Date: May 18, 2018  
Time: 9:00 a.m.

Complaint Filed: October 6, 2017  
Trial Date: March 1, 2019

1 All Defendants respectfully submit this memorandum of points and authorities in  
2 opposition to plaintiff Karl Beck's ("Plaintiff") Motion to Compel Responses To Request for  
3 Production of Documents, Set One.

4 **I. STATEMENT OF FACTS**

5 Plaintiff's Requests for Production fail to comply with California law. Indeed, the  
6 Requests for Production might as well be condensed into a single sentence: produce everything in  
7 your possession. However, requests for production must "reasonably particularize" each category  
8 of item. (Code Civ. Proc. § 2031.030(c)(1); *Calcor Space Facility, Inc. v. Superior Court* (1997)  
9 53 Cal.App.4th 216, 222 (document demands stating "[p]roduce everything in your possession  
10 which in any way relates to gun mounts" were improper).) Accordingly, Defendants respectfully  
11 request the Court deny Plaintiff's Motion to Compel in its entirety request the Court impose  
12 monetary sanctions against Plaintiff and/or Plaintiff's counsel in the amount of \$2,600.00 due to  
13 Plaintiff's misuse of the discovery process.

14 **A. Production Requests To PLPCC**

15 Plaintiff's Request for Production of Documents, Set One, to defendant Point Loma  
16 Patients Consumer Cooperative ("PLPCC") contains 6 pages of prefatory instructions subdivided  
17 into the following categories: (1) Instructions (pages 1-3); (2) Definitions (pages 4-5); and (3)  
18 Rules Of Construction (pages 5-6). The actual document requests begin on page 7. With respect  
19 to PLPCC, Plaintiff seeks to compel responses to requests 2-7: Request 2: All DOCUMENTS and  
20 DATA (including electronic mail and other COMMUNICATIONS) that REFER or RELATE to  
21 Sinner Brothers, Inc. and/or Justus Henkes, IV, Inc.; Request 3: All DOCUMENTS and DATA  
22 (including electronic mail and other COMMUNICATIONS) that REFER or RELATE to YOUR  
23 Articles of Incorporation and amendments thereto, all bylaws and amendments thereto, and all  
24 meeting minutes; Request 4: All DOCUMENTS and DATA (including electronic mail and other  
25 COMMUNICATIONS) that REFER or RELATE to any contracts or agreements, formal or  
26 informal, between or among YOU and any defendant in this ACTION; Request 5: All  
27 COMMUNICATIONS with, including, by or between, any defendant in this ACTION; Request  
28 6: All COMMUNICATIONS with, including, by or between, any natural or legal person

1 RELATED to the cultivation, growth, production, refinement, transfer, carry transport,  
2 distribution, sale, purchase, and/or financing of MEDICAL MARIJUANA; Request 7: All  
3 DOCUMENTS and DATA (including electronic mail and other COMMUNICATIONS) that  
4 REFER or RELATE to YOUR payment in, payment to, handling of, and accounting for, cash.

5 **B. Production Requests To Individual Defendants Adam Knopf And Justus**  
6 **Henkes**

7 Plaintiff's Request for Production of Documents, Set One, to the individual defendants,  
8 Knopf and Henkes, contains 6 pages of prefatory instructions subdivided into the following  
9 categories: (1) Instructions (pages 1-3); (2) Definitions (pages 4-5); and (3) Rules Of  
10 Construction (pages 5-6). The actual document requests begin on page 7. With respect to the two  
11 individual defendants, Plaintiff seeks to compel Knopf and Henkes to respond to requests 1-7, 9,  
12 and 10: Request 1: All DOCUMENTS and DATA (including electronic mail and other  
13 COMMUNICATIONS) that REFER or RELATE to any contracts or agreements, formal or  
14 informal, between or among YOU and any defendant in this ACTION; Request 2: All  
15 DOCUMENTS and DATA (including electronic mail and other COMMUNICATIONS) that  
16 REFER or RELATE to YOUR tax returns; Request 3: All of YOUR bank statements; Request 4:  
17 All DOCUMENTS and DATA (including electronic mail and other COMMUNICATIONS) that  
18 REFER or RELATE to YOUR expenses RELATING to MEDICAL MARIJUANA, including but  
19 not limited to rent, utilities, insurance, fees, wages, taxes, interest, supplies, maintenance, travel,  
20 meals and entertainment, and training; Request 5: All DOCUMENTS and DATA (including  
21 electronic mail and other COMMUNICATIONS) that REFER or RELATE to any salary, wage,  
22 compensation, pay, remuneration, emolument, benefit, kick-back, gift, donation or other transfer  
23 of value with, including, by or between, YOU and any defendant in this ACTION; Request 6: All  
24 DOCUMENTS and DATA (including electronic mail and other COMMUNICATIONS) that  
25 REFER or RELATE to any salary, wage, compensation, pay, remuneration, emolument, benefit,  
26 kick-back, gift, donation or other transfer of value with, including, by or between YOU and any  
27 natural or legal person involved in the cultivation, growth, production, refinement, transfer, carry,  
28 transport, distribution, sale, purchase, and/or financing of MEDICAL MARIJUANA; Request 7:

1 All DOCUMENTS and DATA (including electronic mail and other COMMUNICATIONS) that  
2 REFER or RELATE TO YOUR payment in payment to, handling of, and accounting for, cash;  
3 Request 9: All COMMUNICATIONS with, including, by or between, any defendant in this  
4 ACTION; Request 10: All COMMUNICATIONS with, including, by or between, any natural or  
5 legal person RELATED to the cultivation, growth, production, refinement, transfer, carry,  
6 transport, distribution, sale, purchase, and/or financing of MEDICAL MARIJUANA.

7 **C. Production Requests To All Other Entity Defendants**

8 Plaintiff's Request for Production of Documents, Set One, to all entity defendants other  
9 than PLPCC contains 6 pages of prefatory instructions subdivided into the following categories:

10 (1) Instructions (pages 1-3); (2) Definitions (pages 4-5); and (3) Rules Of Construction (pages 5-  
11 6). The actual document requests begin on page 7. With respect to the non PLPCC entity  
12 defendants, Plaintiff seeks to compel responses to requests 1-7 and 9-11: Request 1: All  
13 DOCUMENTS and DATA (including electronic mail and other COMMUNICATIONS that  
14 REFER or RELATE to any contracts or agreements, formal or informal, between or among YOU  
15 and any defendant in this ACTION; Request 2: All DOCUMENTS and DATA (including  
16 electronic mail and other COMMUNICATIONS) that REFER or RELATE to YOUR tax returns;  
17 Request 3: All of YOUR bank statements; Request 4: All DOCUMENTS and DATA (including  
18 electronic mail and other COMMUNICATIONS) that REFER or RELATE to YOUR expenses,  
19 including but not limited to rent, utilities, insurance, fees, wages, taxes, interest, supplies,  
20 maintenance, travel, meals and entertainment, and training; Request 5: All DOCUMENTS and  
21 DATA (including electronic mail and other COMMUNICATIONS) that REFER or RELATE to  
22 any salary, wage, compensation, pay, remuneration, emolument, benefit, kick-back, gift, donation  
23 or other transfer of value with, including, by or between, YOU and any defendant in this  
24 ACTION; Request 6: All DOCUMENTS and DATA (including electronic mail and other  
25 COMMUNICATIONS) that REFER or RELATE to any salary, wage, compensation, pay,  
26 remuneration, emolument, benefit, kick-back, gift, donation or other transfer of value with,  
27 including, by or between, YOU and any natural or legal person involved in the cultivation,  
28 growth, production, refinement, transfer, carry, transport, distribution, sale, purchase, and/or

1 financing of MEDICAL MARIJUANA; Request 7: All DOCUMENTS and DATA (including  
2 electronic mail and other COMMUNICATIONS) that REFER or RELATE to YOUR payment in,  
3 payment to, handling of, and accounting for, cash; Request 9: All COMMUNICATIONS with,  
4 including, by or between, any defendants in this ACTION; Request 10: All  
5 COMMUNICATIONS with, including, by or between, any natural or legal person RELATED to  
6 the cultivation, growth, production, refinement, transfer, carry, transport, distribution, sale,  
7 purchase, and/or financing of MEDICAL MARIJUANA; Request 11: All DOCUMENTS and  
8 DATA (including electronic mail and other COMMUNICATIONS) that REFER or RELATE to  
9 YOUR Articles of Incorporation and any amendments thereto, all bylaws and amendments  
10 thereto, and all meeting minutes.

11 **D. Meet And Confer Efforts- All Discovery**

12 The declaration of Tamara Leetham, filed and served concurrently herewith, details the  
13 parties meet and confer efforts related to all discovery. Specific to these motions to compel

14 On February 22, 2018, Ms. Leetham participated in the case management conference meet  
15 and confer phone call with Mr. Restis and co-defense counsel, Matthew Dart, and an associate at  
16 Austin Legal Group, Richard Andrews. (Leetham Decl. ¶ 21.) The parties discussed multiple  
17 case related issues primarily focused on discovery including disagreement over what Defendants  
18 would respond to and what documents they would produce, Plaintiff's access to the patient list,  
19 and the scope of ESI. (Id.) Ms. Leetham voiced her continued concern that Plaintiff has  
20 repeatedly accused Defendants of committing crimes, has referred to them as criminals, has  
21 accused them of engaging in a criminal enterprise (RICO) including money laundering and tax  
22 fraud. (Id.) At the end of the phone call, **Plaintiff continued to assert his entitlement to every**  
23 **document requested and a response to every special interrogatory** and stated that he would  
24 litigate the issues, including the requests at issue in these motions. (Id.)

25 On March 9, 2018, Mr. Restis e-mailed Ms. Leetham a meet and confer letter regarding  
26 Defendants objections to Request for Production, Set One. (Leetham Decl. ¶ 26.) On March 12,  
27 2018, Mr. Restis e-mailed Ms. Leetham a meet and confer letter regarding Defendants objections  
28 to Special Interrogatories, Set One. (Leetham Decl. ¶ 27.) **On March 13, 2018, in response to**

1 **his March 9 and March 12 letters, Ms. Leetham e-mailed Mr. Restis that Defendants would**  
2 **be sending him a comprehensive meet and confer letter related to discovery propounded to**  
3 **date along with a request that we arrange a mutually agreeable date and time to meet and**  
4 **confer.** (Leetham Decl. ¶ 28; Ex. A.) (A true and correct copy of the March 13, 2018 e-mail is  
5 attached as Exhibit A and incorporated by reference.) **On March 14, 2018, Ms. Leetham e-**  
6 **mailed Mr. Restis a meet and confer letter that identified general categories of objectionable**  
7 **information with specific examples.** (Leetham Decl. ¶ 29.) (A true and correct copy of the  
8 March 14, 2018 e-mail and letter to Mr. Restis is attached as Exhibit B and incorporated by  
9 reference.)

10 On March 23, 2018, Mr. Dart and Ms. Leetham met in person with Mr. Restis to discuss  
11 outstanding discovery including those requests that are the subject of these motions to compel.  
12 (Leetham Decl. ¶ 30.) In part, the parties used Ms. Leetham's March 14, 2018 letter as an agenda  
13 to guide the discussion. (Id.) Through the discussion, we touched upon the following topics,  
14 without agreement: The scope of discoverable financial records for entity defendants; (Leetham  
15 Decl. ¶ 30(a)); The scope of discoverable financial records for individual defendants; (Leetham  
16 Decl. ¶ 30(b)); Employee records; (Leetham Decl. ¶ 30(c)); Applicability of the tax return  
17 privilege; (Leetham Decl. ¶ 30(d)); Applicability of the attorney-client privilege. (Leetham Decl.  
18 ¶ 30(e).) The parties were unable to come to an agreement limiting the scope of discovery,  
19 necessitating Defendants motion for a protective order and Defendants oppositions to these  
20 motions. (Leetham Decl. ¶ 31.)

21 Through the date of this declaration, Plaintiff has propounded 37 sets of discovery  
22 requests on the entity defendants and 10 sets of discovery requests on the individual defendants  
23 totaling 47 sets of discovery requests. (Leetham Decl. ¶ 32.) In total, Plaintiff has propounded  
24 more than 400 separate discovery requests on Defendants. (Id.) The totality of Plaintiff's  
25 discovery requests demands access to every documents and information related to all aspects of  
26 entity defendants' businesses and the individual defendants' personal lives. (Id.)



1 *Superior Court* (1998) 67 Cal.App.4th 424, 436 (party’s attempts at informal resolution were  
2 inadequate, where party propounded “grossly overbroad” discovery requests, and then, after  
3 receiving expectable objections, simple sent a single “meet and confer” letter late in the relevant  
4 time period); *Townsend, supra*, 61 Cal.App.4th at 1439 (“the law requires that counsel attempt to  
5 talk the matter over, compare their view, consult, and deliberate”).)

6 As outlined above, Defendants did engage in an attempted meet and confer process to  
7 narrow the issues with no success. Moreover, Defendants stated they were willing to cooperate  
8 and produce some relevant documents that were responsive to these unnecessarily overbroad  
9 requests but Plaintiff never consented to a more limited production. Although Defendants  
10 explained their concerns to Plaintiff, Plaintiff refused to budge on any of the requests and stated  
11 he would be strategically filing motions to compel on all discovery propounded to date. Because  
12 Plaintiff failed to meet and confer in good faith regarding Defendants concerns as outlined over  
13 the phone, in correspondence, and an in person meeting, Defendants respectfully request that the  
14 Court deny this motion in its entirety. (*Townsend, supra*, 61 Cal.App.4th at 1439.)

15 **III. PLAINTIFF FAILED TO “REASONABLY PARTICULARIZE” EACH**  
16 **CATEGORY OF DOCUMENTS SOUGHT IN PLAINTIFF’S REQUESTS**

17 A party must “[d]esignate the documents, tangible things, land or other property, or  
18 electronically stored information to be inspected, copied, tested, or sampled either by specifically  
19 describing each individual item or by reasonably particularizing each category of item.” (Code  
20 Civ. Proc. § 2031.030.) “The ‘reasonably’ in the statute implies a requirement such categories be  
21 reasonably particularized from the stand point of the party who is subjected to the burden of  
22 producing the materials. Any other interpretation places too great a burden on the party on whom  
23 the demand is made.” (*Calcor Space Facility, Inc., supra*, 53 Cal.App.4th at 222.)

24 “It is not reasonable to describe documents by categories which bear no relationship to the  
25 manner in which the documents are kept, and which require the responding party to determine (at  
26 risk of sanctions) which of its extensive records fit a demand that asks for everything in its  
27 possession relating to a specific topic.” (*See The Rutter Group, Demand Procedure, Cal. Prac.*  
28 *Guide Civ. Pro. Before Trial Ch. 8H-4, 8:1435.*) Indeed, “requests for ‘all financial records’ or



1 ‘all correspondence’ or ‘all documents relating to liability’ may be objectionable for inadequate  
2 description. They embrace too many subcategories to have much meaning.” (*Id.*) “When  
3 discovery requests are grossly overbroad on their face, and hence do not appear reasonably  
4 related to a legitimate discovery need, a reasonable inference can be drawn of an intent to harass  
5 and improperly burden.” (*Obregon, supra*, 67 Cal.App.4th at 431.) Thus, discovery may be  
6 denied outright in “cases if clear intent to burden or harass, cases of clear flaunting of statutory  
7 responsibilities, cases of established track records of lack of good faith, and the like.” (*Id.* At  
8 434.)

9 The requests are set forth above in the statement of facts and on review, it is clear that the  
10 totality of the requests amounts to a complete free for all for Plaintiff. It is also clear that there is  
11 no ascertainable limitation or boundary by which Defendants actually can produce. In short,  
12 Plaintiff failed to reasonably particularize each category of documents sought in its Requests.

13 **A. Requests For Production To PLPCC**

14 Requests 2-5 and 7 to PLPCC that Plaintiff seeks to compel can be condensed into the  
15 following single request: Produce every single document, data, or communication related to your  
16 lease, landlord, accountant, corporate governance, and accounting. Requests 6 is more egregious  
17 as it essentially requests any document ever generated by PLPCC. Prior to January 1, 2018,  
18 PLPCC exclusively sold medical marijuana. Everything about its business would be related to  
19 medical marijuana. This request, quite literally, requires every single document to be produced.  
20 However, it is well settled under California law that these requests are improper because they do  
21 not “reasonably particularize” each category of item. (Code Civ. Proc. § 2031.030(c)(1).)

22 **B. Requests For Production To The Individual Defendants**

23 Plaintiff’s requests to Adam Knopf and Justus Henkes can be condensed into this single  
24 request: Produce every single piece of personal financial information, including tax returns, and  
25 every single communication generated since PLPCC opened.

26 As discussed above, the law is clear that Plaintiff’s overbroad requests are improper  
27 because they do not “reasonably particularize” each category of item.

28 **C. Requests For Production To The Non-PLPCC Entity Defendants**

1 Plaintiff's requests to the non-PLPCC entity defendants can be condensed into this single  
2 request: Produce all financial information including tax returns and all communications with  
3 other defendants regardless of relevance or applicability to this case. This is improper and these  
4 requests should be denied.

5 **V. PLAINTIFF'S ABUSIVE DISCOVERY INVADES PRIVILEGE AND PRIVACY**

6 **A. Plaintiff Seeks Disclosure Of Documents And Information Protected By The**  
7 **Right To Privacy In California's Constitution**

8 Plaintiff has propounded discovery that, if permitted, steamrolls confidentiality and  
9 privacy which Defendants and third parties have not abrogated by this litigation. California's state  
10 constitution affirms that all people have an "inalienable" right to pursue and obtain privacy. (Cal.  
11 Const. Art. 1 § 1.) For matters falling within the right to privacy, a court must grant a protective  
12 order unless disclosure is found to further a compelling state purpose and that the purpose could  
13 not be achieved through less intrusive means. (*Ibarra v. Superior Court* (2013) 217 Cal.App.4th  
14 695, 706.) As with other privacy considerations, the Court balances the need to obtain the  
15 discovery with the party's privacy rights. (*Schnabel v. Superior Court* (1993) 5 Cal.App.4th 704,  
16 712.) Discovery orders implicating privacy rights are evaluated under the framework established  
17 in *Hill v. National Collegiate Athletic Assn.* (1994) 7 Cal.4th 1 and reiterated in *Pioneer*  
18 *Electronics (USA) v. Superior Court* (2007) 40 Cal.4th 360.

19 First, the privacy claimant must possess a legally protected privacy interest, of which there  
20 are two general types, autonomy privacy (the interest in making intimate personal decisions or  
21 conducting personal activities without observation, intrusion or interference) and informational  
22 privacy. (*Hill, supra*, 7 Cal.4th at 35.) Informational privacy is the interest "in precluding the  
23 dissemination or misuse of sensitive and confidential information." (*Id.*) Information in this class  
24 is deemed private "when well-established social norms recognize the need to maximize individual  
25 control over its dissemination and use to prevent unjustified embarrassment or indignity." (*Id.*)  
26 Second, the privacy claimant must have a reasonable expectation of privacy under the specific  
27 circumstances, including "customs, practices, and physical settings surrounding particular  
28 activities [which] may create or inhibit reasonable expectations of privacy. (*Hill, supra*, 7 Cal.4th

1 at 36.) Third, actionable invasions of privacy “must be sufficiently serious in their nature, scope  
2 and actual or potential impact to constitute an egregious breach of the social norms underlying the  
3 privacy right.” (*Hill, supra*, 7 Cal.4th at 37.) Finally, if the three criteria for invasion of a privacy  
4 interest exist, then the privacy interest “must be measured against other competing or  
5 countervailing interests in a ‘balancing test.’ ” (*Pioneer, supra*, 40 Cal.4th at 371.) In  
6 evaluating claims, “considerations which, among others, will affect the exercise of the trial  
7 court’s discretion” include “the purpose of the information sought, the effect that disclosure, and  
8 ability of the court to make an alternative order which may grant partial disclosure, disclosure in  
9 another form, or disclosure only in the event that the party seeking the information undertakes  
10 certain specified burdens which appear just under the circumstances.’ ” (*Valley Bank, supra*, 15  
11 Cal.3d at 658.) The balancing test applies to records sought from third parties as well. Any  
12 discovery order should be carefully tailored to protect the interests of the requesting party in  
13 obtaining a fair resolution of the issues while not unnecessarily invading the privacy of the third  
14 party. (*Nativi v. Deutsche Bank Nat’l Trust Co.* (2014) 223 Cal.App.4th 261, 318.)

15 In this case, Defendants and third parties have legally protected interests in their  
16 information privacy. The facts preclude the unwarranted dissemination of a potentially  
17 significant amount of this private information, including financial, employment, and medical  
18 information related to Defendants and third parties and a protective order is warranted given  
19 Plaintiff’s attempt to intrude on this information.

20 1. All Defendants And Third Parties Have A Financial Right To Privacy

21 Even when the information sought is relevant, an individual who is a party to litigation  
22 maintains the fundamental right of privacy regarding their confidential financial affairs under  
23 California Constitution, Article 1, Section 1. (Code Civ. Proc. § 3295(c); *Cobb v. Superior Court*  
24 (1979) 99 Cal.App.3d 543, 550.) In addition, the confidential affairs of third persons (nonparties)  
25 are also entitled to privacy. (*Valley Bank of Nevada v. Superior Court* (1975) 15 Cal.3d 652,658.)

26 Here, Defendants and third parties have a legally protected privacy interest. They also  
27 have a reasonable expectation of privacy under the circumstances. Defendants, *particularly the*  
28 *individual defendants*, and third parties in these circumstances would not expect to have details

1 related to their finances disclosed to a man who purchased cannabis a handful of times at a  
2 dispensary. Plaintiff's attempted invasion is serious in scope because it is tantamount to Plaintiff  
3 stepping in the shoes of every Defendant and peering into their lives as if he was the Defendant.  
4 It is serious to third parties who have no control over how and the extent to which their  
5 information is disclosed. Plaintiff's discovery, if allowed, requires Defendants to disclose every  
6 aspect of their financial lives. Plaintiff should not be allowed such an invasion and Defendants  
7 respectfully request the Court preclude this invasion.

8                   2. Defendants And Third Parties Have A Right To Privacy In Their Employment  
9                   Information Including Employee Personnel Files

10           Plaintiff's discovery as phrased would require production of employment information and  
11 employee records which is not relevant to the Complaint and is a protected privacy right.  
12 Employers have a duty to protect nonparty employee information (addresses, telephone numbers,  
13 etc.) from disclosure. (*Planned Parenthood Golden State v. Superior Court* (2000) 83  
14 Cal.App.4th 347, 359.) In order to invade the privacy rights of the employee in his or her  
15 employment records and/or personnel file, the party seeking the records must demonstrate that the  
16 information sought is "directly relevant to a claim or defense" in the pending action -- a much  
17 more stringent standard than the usual standard for discoverability -- and that all other less  
18 intrusive ways of accessing the information have been exhausted without success, at which point  
19 the court will balance the "compelling need" of the party seeking the records against the interest  
20 of the employee in keeping them private. Even then, certain documents, such as letters of  
21 reference from third parties, are not discoverable, due to the privacy interest of those third parties.

22           Here, Plaintiff has not identified or plead a specific employment claim or an employment  
23 practice that is challenged. Accordingly, discovery related to employment should be precluded  
24 because it is irrelevant and there is no demonstrable need for Plaintiff to access employment files.  
25 Defendants and third-party employees have a reasonable expectation of privacy in their  
26 employment information under any circumstance. Plaintiff's request for this information is an  
27 egregious breach as it will divulge contact information, rates of pay, tax information, and so on.  
28 There is no countervailing interest to Plaintiff in such disclosure and the balance weighs in favor

1 of precluding any discovery related to Defendants employment information and third-parties  
2 employment information.

3 3. PLPCC's Third-Party Qualified Patients And Caregivers Have A Right To  
4 Privacy

5 Plaintiff has indicated he agrees with this and will not require PLPCC to produce  
6 documents or records that invade its qualified patients medical privacy.

7 **B. Plaintiff Seeks Disclosure Of Privileged Documents And Information**

8 As used in the rules governing discovery, “privileged” means the constitutional and  
9 statutory privileges including self-incrimination (Evidence Code § 940), attorney-client (Evidence  
10 Code § 950 et seq.) and the “qualified privileges” for such things as trade secrets (Evidence Code  
11 § 1060 et seq.) and tax returns (*Webb v Standard Oil Co.* (1957) 49 Cal.2d 509; *Gonzalez v*  
12 *Superior Court* (1995) 33 Cal.App.4th 1539, 1547.)

13 Plaintiff’s discovery implicates the attorney client privilege and the privilege against self-  
14 incrimination. Communications between an attorney and a client (or potential client) are  
15 presumed to have been made in confidence and any request whereby Plaintiff seeks documents  
16 reflecting attorney-client privileged communications are privileged and not discoverable in this  
17 action. Witnesses may not be compelled to incriminate themselves. (*People v Trujeque* (2015) 61  
18 Cal.4th 227, 267.) Under both the Fifth Amendment and California Constitution Article I, § 15, a  
19 person has the right to refuse to answer potentially incriminating questions posed in any  
20 proceeding. (*Hudec v Superior Court* (2015) 60 Cal.4th 815, 819.) This privilege is personal for  
21 an individual and does not extend to a business entity. The privilege not only protects an  
22 individual from being forced to testify against oneself in a pending criminal proceeding, but also  
23 protects an individual from being compelled to answer questions in any civil proceeding when the  
24 individual reasonably believes the answers might incriminate him or her in a criminal case. (*Oiye*  
25 *v. Fox* (2012) 211 Cal.App.4th 1036, 1052.) Plaintiff’s counsel has warned that this litigation will  
26 make its way into the public record and “unleash” a chain of events outside of your control.”  
27 Thus, the individual defendants request that the Court enter a protective order that protects them  
28 from making any disclosures in this litigation as it seems everything they say and do, according to

1 Plaintiff, could subject them to criminal charges.

2 1. Tax Return Privilege As To All Defendants

3 Taxpayers are privileged to withhold disclosure of copies of both their federal and state  
4 tax returns and the information contained therein. (*Webb v Standard Oil Co. of Calif.* (1957) 499  
5 Cal.2d 509, 513-514.) The purpose of the privilege is to facilitate tax enforcement by  
6 encouraging a taxpayer to make full and truthful declarations in their tax return, without fear that  
7 such statements will be revealed or used against the taxpayer for other purposes. (*Sav-On Drugs,*  
8 *Inc. v Superior Ct. (Botney)* (1975) 15 Cal.3d 1, 6.)

9 The tax return privilege is not absolute. In *Sav-On Drugs, Inc. v. Superior Court, supra*,  
10 15 Cal.3d at 8, information related to sales tax returns was found to be privileged, but also  
11 cautioned that "no attempt has been made herein to define the full ambit of the privilege  
12 considered above, nor are we called upon to determine whether under other circumstances  
13 discovery of tax returns and records would be permissible. Our decision is a narrow one, limited  
14 to the record before us." As explained in *Sammut v. Sammut* (1980) 103 Cal.App.3d 557, 560, the  
15 privilege is waived or does not apply in three situations: "(1) there is an intentional  
16 relinquishment (*Crest Catering Co. v. Superior Court* (1965) 62 Cal.2d 274, 278), (2) the  
17 'gravamen of [the] lawsuit is so inconsistent with the continued assertion of the taxpayer's  
18 privilege as to compel the conclusion that the privilege has in fact been waived' (*Wilson v.*  
19 *Superior Court* (1976) 63 Cal.App.3d 829, 830), or (3) a public policy greater than that of  
20 confidentiality of tax returns is involved (*Miller v. Superior Court* (1977) 71 Cal.App.3d 145,  
21 149)." Only one case has found that public policy mandated an exception to the privilege - *Miller*  
22 *v. Superior Court*, contempt proceedings were instigated against the petitioner for failure to pay  
23 child support. The petitioner claimed he was unable to pay the support but asserted the privilege  
24 against forced disclosure of his tax returns. Relying on specific statutes that allowed public  
25 agencies access to certain tax information, the court concluded that the "policy favoring the  
26 confidentiality of tax returns must give way to the greater public policy of enforcing child support  
27 obligations." (*Id.* at 149.) The court stressed that its "decision is limited to the narrow issue of the  
28 assertion of the privilege of nondisclosure of income tax returns in the context of proceedings to

1 enforce child support obligations. In that context, we hold that the privilege does not apply."  
2 (*Ibid.*) The *Miller* holding was expressly limited to its facts.

3 Here, Plaintiff specifically and directly demands production of *all Defendants'* tax returns  
4 and all associated information used to complete their tax returns. Although the tax return  
5 privilege is not absolute, none of the exceptions, as discussed above, apply in this case.  
6 Accordingly, Defendants' tax returns and related documents are privileged and not discoverable  
7 in this action.

8 **C. Plaintiff's Requests Are Oppressive, Burdensome, Duplicative, Cumbersome,  
And Unreasonable**

9 As noted above, Plaintiff's requests are tantamount to stepping into the shoes of each  
10 Defendant, as if Plaintiff was the Defendant, and peering into every aspect of their businesses and  
11 personal lives. This is a fishing expedition that is oppressive, burdensome, cumbersome, and  
12 unreasonable. "Oppression" means the ultimate effect of the burden of responding to the  
13 discovery is "incommensurate with the result sought. (*West Pico Furniture Corp. v. Superior*  
14 *Court* (1961) 56 Cal.2d 413.) In considering whether the discovery is unduly burdensome or  
15 expensive, the court takes into account "the needs of the case, the amount in controversy, and the  
16 importance of the issues at stake in the litigation." (*People v. Sarpas* (2014) 225 Cal.App.4th  
17 1539, 1552.)

18 Here, Defendants are not seeking to avoid any discovery or to gain any tactical advantage.  
19 Defendants seek to curtail "oppression" and "undue burden" by appropriately limiting the scope  
20 of what they must respond to and by gaining the time to respond to the discovery once the scope  
21 of what they will be required to produce is determined. Plaintiff has been unwilling to voluntarily  
22 limit the scope of discovery which necessitated this motion by Plaintiff.

23 **IV. MONETARY SANCTIONS ARE WARRANTED**

24 "Misuses of the discovery process include, but are not limited to...(h) making or  
25 opposing, unsuccessfully and without substantial justification, a motion to compel or to limit  
26 discovery; and (i) failing to confer in person, by telephone, or by letter with an opposing party or  
27 attorney in a reasonable and good faith attempt to resolve informally any dispute concerning  
28

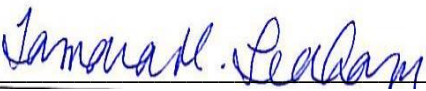
1 discovery[.]” (Code Civ. Proc. § 2023.010(h)-(i).) “The court may impose a monetary sanction  
2 ordering that one engaging in the misuses of the discovery process, or any attorney advising that  
3 conduct, or both pay the reasonable expenses, including attorney’s fees, incurred by anyone as a  
4 result of that conduct.” (Code Civ. Proc. § 2023.030(a).) In fact, “[n]otwithstanding the outcome  
5 of the particular discovery motion, the court shall impose a monetary sanction on the party who  
6 fails to confer as required pay the reasonable expenses, including attorney’s fees, incurred by  
7 anyone as a result of that conduct.” (Code Civ. Proc. § 2023.020.) Here, Defendants respectfully  
8 request that the Court impose monetary sanctions in the amount of \$2,600.00 against Plaintiff  
9 and/or Plaintiff’s counsel due to Plaintiff’s failure to meet and confer in good faith and for  
10 bringing this motion to compel without substantial justification.

11 **V. CONCLUSION**

12 For the foregoing reasons, Defendants respectfully request the Court deny Plaintiff’s  
13 motion in its entirety and impose monetary sanctions against Plaintiff and/or Plaintiff’s counsel in  
14 the amount of \$2,600.00.


15 Dated: May 7, 2018

AUSTIN LEGAL GROUP, APC

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