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SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

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

Plaintiff,

v.

POINT LOMA PATIENTS CONSUMER COOPERATIVE CORPORATION, A California Corporation, **ADAM KNOPF,** an Individual, **JUSTUS H. HENKES IV**, an Individual, **419 CONSULTING INC**., a California Corporation, **GOLDEN STATE GREENS LLC**, a California LLC, **FAR WEST MANAGEMENT, LLC**, a California LLC, **FAR WEST OPERATING, LLC**, a California LLC, **FAR WEST STAFFING, LLC**, a California LLC, and **DOES 1-50**,

Defendants.

Case No: 37-2017-00037524-CU-BT-CTL

CLASS ACTION

REPLY IN FURTHER SUPPORT OF PLAINTIFF'S MOTION TO COMPEL SPECIAL INTERROGATORIES (SET ONE) TO ALL DEFENDANTS

Date: May 18, 2018
Time: 9:00 a.m.
Judge: Hon. Joel R. Wohlfeil
Ctrm: C-73

I. INTRODUCTION

Plaintiff Karl Beck respectfully submits this Reply in support of his Motion to Compel further responses to Special Interrogatory Numbers one (1), four (4) and six (6) from Set One ("MTC Interrogatory Responses") to defendants Point Loma Patients Consumer Cooperative Corporation, Adam Knopf, Justus H. Henkes IV, 419 Consulting Inc., Golden State Greens LLC, Far West Management, LLC, Far West Operating, LLC, and Far West Staffing, LLC (collectively "Defendants").

As an initial matter, Defendants' Opposition to Plaintiff's Motion to Compel Special Interrogatories (RoA # 142, the "Opposition") offers the Court no legitimate reason for Defendants' failure to verify their interrogatory responses. *Plaintiff served us with so many interrogatories that we forgot to verify our responses* is their only purported reason, and it is not a serious one.[1] To the extent that Defendants did, in fact, "overlook" their obligation to verify interrogatory responses, Plaintiff's counsel reminded Defendants of this obligation in a meet-and-confer letter dated March 12, 2018 ("March 12 Letter"). Specifically, in a sub-heading titled "Lack of Verification," Plaintiff's counsel stated, "please provide a verification of Defendants' [interrogatory] responses (and any amended responses) or Plaintiff will be forced to involve the Court." RoA # 114, Restis Decl. ISO Motion to Compel Srog (Set One) ("Restis Decl."), Ex. Q at p. 3. Defendants *still* declined to provide verified responses following that reminder. The mere fact that Plaintiff had to file a motion to compel to obtain routine party verifications would ordinarily warrant the payment of Plaintiff's attorneys' fees by Defendants.

Moreover, Defendants offer the Court no substantive law or facts legitimizing their failure to provide complete responses to the three interrogatories at issue: Special Interrogatory Numbers one (1), four (4) and six (6). They argue that they have provided "substantive" answers, but that is a far cry from providing complete answers. None of Defendants' objections hold water, and the

[1] Opposition at p. 2:13-15.

Court should therefore compel further responses.

II. THE COURT SHOULD COMPEL DEFENDANTS TO PROVIDE COMPLETE ANSWERS TO PLAINTIFF'S SPECIAL INTERROGATORIES

A. Defendants' Stylistic Objections Do Not Justify Their Refusal To Respond

In their Opposition, Defendants rely almost entirely upon objections to Plaintiff's style and word choices as an excuse to respond with (and withhold) whatever information they want. Defendants offer no legal authority or practical explanation to show how Plaintiff's limited use of definitions or "subparts" prevent them from responding to the Interrogatories at issue. Indeed, there is no such authority or explanation.

Defendants summarily argue that they have responded "in a practical fashion, construing each term reasonably, and providing substantive responses and information to each interrogatory." Opposition at 3. Defendants, however, demonstrably have not done that.

B. Special Interrogatory No. 1

Plaintiff requested the identification of each "COMPUTER," expressly including traditional computers, as well as other commonly used electronic devices like tablets and smartphones. In response, Defendants elected to omit from disclosure any electronic device other than conventional desktop and laptop computers. This is facially improper, and Defendants make no argument to the contrary. In a case like this, where two Individual Defendants allegedly conspired to operate multiple Shell Companies for personal profit, Defendants' *smartphones* are likely to contain some of the most relevant evidence available for trial. Defendants' refusal to identify their smartphones or other mobile devices is a plain and simple misuse of the discovery process. *See Liberty Mut. Fire Ins. Co. v. LcL Adm'rs, Inc.* (2008) 163 Cal.App.4th 1093, 1101-02 (misuses of the discovery process include, *inter alia*, "[m]aking an evasive response to discovery").[2]

[2] It is difficult to imagine how Individual Defendants Knopf and Henkes could have simultaneously run six purportedly "independent" businesses — the PLPCC, plus five Shell Companies — without the aid of mobile devices.

Beyond their improper device limitations, Defendants did not provide the requested information for those devices they did choose to "identify." For identification purposes, Plaintiff expressly requested the "Brand," "Model," and "*Serial or other identification number*" for each "COMPUTER." By their own admission, Defendants did not do this, instead electing to provide the "brand," quantity and "type" of each (conventional) computer. One look at Defendants' responses to Special Interrogatory No. 1 shows how utterly useless those responses are for "identifying" and distinguishing between their different COMPUTERS.

For instance, Defendant Henkes, the PLPCC, and Defendants Golden State Greens, FW Management, FW Operating, and FW Staffing *all* purport to have used "two HP Pavilion laptops." *See* Plaintiff's Separate Statement, RoA # 113, at 3-4. Did Defendants operate all four of these Shell Companies using the same two laptops used by Defendant Henkes to run the PLPCC? Or did Defendants operate the Shell Companies using computer systems that were distinct between the PLPCC and the Shell Companies? Plaintiff simply cannot tell because Defendants declined to provide any unique identifiers for those "COMPUTERS" they cherry-picked for disclosure.

Not only are the answers to the above questions necessary to identify relevant sources of evidence in this case, the answers also go directly to the merits of Plaintiff's case. To the extent that Defendant Henkes ran the PLPCC and four Shell Companies using only *the same two laptops*, the Shell Companies would look a lot like what Plaintiff alleges them to be: mere alter egos of the Individual Defendants, by the Individual Defendants and for the Individual Defendants to generate personal profit.

To the extent that the Shell Companies were managed and operated on distinct computer systems, they might look more like legitimate, independent contractors operating at arms-length from the PLPCC and each other. Defendants offer the Court no reason why Plaintiff is not entitled to identify and distinguish between these COMPUTER systems through a single interrogatory. Indeed, Plaintiff is not even approaching his limit of 35 interrogatories, even if subparts are included.

Defendants offer the Court no reason why they did not or cannot provide Plaintiff with the requested serial numbers or other unique identifiers for the COMPUTERS they selectively described.

At bottom, Defendants have no valid reason to conceal the existence of their mobile devices, or to conceal the actual identities of the COMPUTERS they used to operate the PLPCC and Shell Companies. The Court should therefore compel Defendants to provide serial numbers or other unique identifiers for the COMPUTERS Defendants have already described, and further compel Defendants to disclose the requested information for other COMPUTERS (such as tablets and mobile devices) that Defendants used to run the PLPCC and Shell Companies before 2018.

C. Special Interrogatory No. 4

Plaintiff requested that Defendants identify the "SOFTWARE" installed on their various COMPUTERS to determine not only the physical hardware, but the electronic programs within which relevant ESI may be stored. Probably the most legally relevant and operationally important category of software that Defendants used in operating the PLPCC and the Shell Companies are the email systems they employed. In response to Special Interrogatory No. 4, however, Defendants conspicuously declined to disclose which email systems they ran on their various COMPUTERS in the ordinary course of business. They argue that "Plaintiff *did not* propound an interrogatory seeking identification of which email program was used by a particular Defendant. Plaintiff inquired only as to software programs 'installed' on each computer." Opposition at p. 4:3-5.

That is pure pettifoggery. Email programs are not COMPUTER devices; common experience teaches that they are not physical hardware. Email exists in the form of SOFTWARE programs and/or CLOUD-based systems. Defendants claim that the sum total of CLOUD-based systems they used during the Class Period is: "none." *See* Plaintiff's Separate Statement, RoA # 113, at pp. 10-11. Therefore, they used email SOFTWARE in the operation of PLPCC and the Shell Companies. Defendants' brief appears to concede as much, but instead suggests that their email SOFTWARE was never "installed" on their COMPUTERS. Opposition at p. 4:3-5. It is difficult to

imagine how that is possible if their email was not contained in a CLOUD system like Google's Gmail. If it's not in a CLOUD, and it's not a COMPUTER, then it must be email SOFTWARE that was, in fact, "installed" on their COMPUTERS. This is true regardless of whether Defendants themselves "installed" email SOFTWARE on their COMPUTERS, or whether it was "installed" by the manufacturers or sellers of those COMPUTERS.[3]

In any event, in the March 12 Letter seeking to meet and confer regarding Plaintiff's Special Interrogatories, Plaintiff's counsel made crystal clear to Defendants that they were seeking to identify Defendants' email systems in connection with Special Interrogatory No. 4. *See* Restis Decl., Ex. Q, March 12 Letter at 4 ("*None of the Defendants identified their email software. Please amend these responses to include this information, as it is a key source of ESI.*"). Defendants' refusal to do so is nothing but gamesmanship, and their briefing bears this out.

The Court should require Defendants to identify all email and messaging SOFTWARE programs that they used to operate PLPCC and the Shell Companies during the relevant time period.

D. Special Interrogatory No. 6

Special Interrogatory No. 6 asks Defendants to identify any CLOUD-based data repositories they used during the relevant period. Plaintiff defines "CLOUD" to include ESI that may be stored remotely on third-party servers. This is necessary to identify third parties who may (or may not) ultimately need to be subpoenaed to obtain relevant evidence that is not saved or stored on Defendants' COMPUTERS themselves.

Defense counsel says their clients responded with "none" to Special Interrogatory No. 6 because they were not "aware of any cloud-based repositories of data." Opposition, at 4:6-7. But that argument is not even consistent with their client's other interrogatory responses. For example, Defendants already identified "Google Docs"—a program that allows the co-authoring, editing and

[3] Perhaps Defendants would seek to have Plaintiff subpoena COMPUTER manufacturers Apple and Hewlett Packard just to prove that someone, somewhere, "installed" email SOFTWARE on Defendants' COMPUTERS. Such nitpicking does not strike Plaintiff as an efficient use of litigation resources.

sharing of electronic documents among multiple internet users—as responsive SOFTWARE. But Google Docs actually fits Plaintiff's definition of a CLOUD-based repository of data. To the extent Defendants used Gmail or other web-based email systems, this would also fit Plaintiff's definition of CLOUD. Yet Defendants conspicuously responded with "none" while also suggesting that no email program was ever "installed" on *any* of their COMPUTERS. Opposition at p. 4. This is simply untenable.

The Court should order Defendants to identify any CLOUD-based repositories of data they created or used during the relevant period.

E. Defendants Did Not Respond At All To Plaintiff's Meet And Confer Efforts With Respect To The Special Interrogatories

Defendants argue that they responded to Plaintiff's March 12 Letter with a meet and confer letter dated March 14 ("March 14 Letter"). That much is true, but Defendants' March 14 Letter is not the "comprehensive meet and confer letter" they claim it to be. Opposition at p. 5. In fact, Defendants' March 14 Letter does not address or even mention interrogatories at all. Leetham Decl., RoA # 141, Ex. B. And while Defendants say they "discussed the *subjects addressed by* these sets of interrogatories" during a meet and confer session on March 23, that is not the same as discussing the interrogatories themselves and Defendants' responses and objections thereto. Defendants have failed to meet and confer regarding Plaintiff's Special Interrogatories, and this further undermines their failure to provide complete responses.

F. Defendants' Attacks On Plaintiff's Separate Statement Are Meritless

Lastly, Defendants take a swipe at the format of Plaintiff's Separate Statement because Plaintiff declined to file eight different Separate Statements discussing the same three, *identical* interrogatories propounded on all eight Defendants. Defendants do not contend that Plaintiff's Separate Statement misstates or omits any of the interrogatories at issue or any of their relevant responses or objections. If the Court would like Plaintiff to refile eight Separate Statements

containing information identical to, and duplicative of, what is already before the Court, Plaintiff is willing to do so, but Plaintiff see no need to bombard the Court with 96 pages of information that can be (and has been) fully and accurately presented to the Court in 12 pages. The format of Plaintiff's Separate Statement was intended to maximize judicial efficiency and convenience. It certainly was not intended to raise a new legal issue for written and oral argument. Defendants are once again frivoling over Plaintiff's document-formatting choices, and in Plaintiff's view, such frivoling is a waste of the parties' and Court's time.

III. CONCLUSION

Defendants have no legally valid reason for refusing to fully respond to Special Interrogatory Numbers 1, 4 and 6. They offered Plaintiff no valid reason through a meet and confer process, and they offer the Court no valid reason in their papers here. For all of the foregoing reasons, the Court should order Defendants to serve complete, verified responses within 14 days.

Respectfully submitted,

DATED: May 11, 2018

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