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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 REQUESTS FOR PRODUCTION (SET ONE)

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

I. INTRODUCTION

Plaintiff Karl Beck hereby respectfully submits this Reply in support of his Motion to Compel Plaintiff's Request for Production (Set One) No. 1 to defendants Point Loma Patients Consumer Cooperative Corporation (the "PLPCC"), Adam Knopf and Justus H. Henkes IV (the "Individual Defendants") and 419 Consulting Inc., Golden State Greens LLC, Far West Management, LLC, Far West Operating, LLC, and Far West Staffing, LLC (collectively, the "Shell Companies," all defendants together as "Defendants").

Defendants' Opposition to Plaintiff's Motion to Compel Production of Documents ("Opposition to Document Production") sounds an indiscriminate breadth of alarms ranging from harassment, to privilege infractions, to self-incrimination with respect to each and every document request. Defendants' blunderbuss approach to objecting has left Plaintiff wondering which objection(s) they are actually standing on with respect to particular requests.

For instance, Plaintiff requested production of any commercial contracts that existed between and among the various Defendants during the relevant period (Request No. 4 to PLPCC and No. 1 to all other Defendants). Defendants have refused to produce any such contracts, or alternatively, verify that none exist. The record remains unclear as to why Defendants refuse to make such a production or verification. Is it because they think producing their commercial contracts constitutes "oppression" under civil discovery rules, or because they think the California and United States constitutions prohibit discovery of "private" facts in civil cases? Plaintiff simply cannot tell because Defendants have blindly asserted every conceivable objection in response to each individual document request, regardless of whether that objection even makes sense in context.[1] This "blunderbuss problem" alone is sufficient for the Court to overrule Defendants' objections. *See, e.g., Korea Data Sys. Co. Ltd. v. Superior Court* (1997) 51 Cal.App.4th 1513, 1516 ("boiler plate" objections are improper).

[1] By way of example only, there is no "tax privilege" or "health privacy" objection that conceivably applies to corporate Defendants' cash handling procedures (Request No. 7 to all Defendants), or to the PLPCC's commercial real estate lease(s) with its landlord (Request No. 2 to PLPCC). Yet Defendants summarily object to these Requests on tax and healthcare grounds. *See* Plaintiff's Separate Statement at pp.4-5, 12.

To the extent that certain of the asserted objections *might* apply to particular Requests (Plaintiff is left to guess which ones), Defendants have provided little or no factual basis that allows Plaintiff to ascertain the scope or merit of such objections. This lack of factual support, like Defendants' blunderbuss problem, is independently fatal to their objections. *W. Pico Furniture Co. v. Superior Court* (1961) 56 Cal.2d 407, 417 ("[Any] objection based upon burden must be sustained by evidence showing the quantum of worked required, while to support an objection of oppression there must be some showing either of an intent to create an unreasonable burden or that the ultimate effect of the burden is incommensurate with the result sought."). Defendants simply have not sustained their burden here, even if their objections were properly mapped to particular Requests.

Throughout the meet and confer process, Plaintiff's counsel has provided Defendants with meaningful guidance in responding to the Requests, limiting their burden only to what is reasonable and necessary to prove (or disprove) Plaintiff's case. Far from demanding that Defendants produce "everything in [their] possession,"[2] Plaintiff's counsel has clarified to Defendants that Plaintiff is *not* seeking things like employees' HR files, patrons' personal health data, or other documents or data divorced from the Complaint's allegations. *See* Declaration of William R. Restis in Support of Plaintiff's Motion to Compel Request for Production (Set One) ("Restis Decl."), RoA # 120, ¶13.

Instead, the Requests at issue primarily seek to provide the financial information necessary for Plaintiff's accounting expert to conduct a meaningful audit, and determine the extent to which Defendants improperly operated the PLPCC for personal profit. That is the threshold question of fact presented by each cause of action in this case, and this Court has previously acknowledged Plaintiff's right to obtain such financial information through the discovery process. RoA # 46 (Minute Order denying Plaintiff's motion to appoint an independent accountant "without prejudice to Plaintiff's ability to adjudicate this <u>important issue</u> via any available future proceeding… this denial is without prejudice of Plaintiff's potential ability to <u>obtain some or all of these records via</u>

[2] Opposition to Document Production at 2.

normal discovery procedures…") (emphasis added). Defendants' refusal to produce *a single responsive document* in this regard is tantamount to a refusal to participate in this action.

Finally, Defendants have asserted myriad confidentiality and privilege objections to each Request, irrespective of whether a particular Request even implicates the purported privilege or privacy concern. Plaintiff's counsel has repeatedly requested that Defendants provide a privilege log to specify the documents they believe to be both responsive and privileged, yet Defendants refuse to provide any privilege log or equivalent disclosure. Defendants' *modus operandi* appears to be that if any (potentially) privileged document is responsive to a particular Request, they simply don't respond to that Request at all. This is clearly improper.

Defendants' Opposition to Document Production offers the Court no justification for their failure to produce *a single document* through seven months of this complex litigation. The Court should therefore grant Plaintiff's Motion to Compel Production of Documents, and award Plaintiff attorneys' fees and expenses in bringing the Motion.[3]

II. DEFENDANTS HAVE NOT EVEN SPECIFIED, LET ALONE SUBSTANTIATED, THEIR BOILER PLATE OBJECTIONS

Clearly, Defendants failed to conduct a good faith investigation to identify and investigate the scope of responsive documents prior to responding to Plaintiff's Requests. *See* CODE OF CIVIL PROC. § 2031.010; *Regency Health Services, Inc. v. Sup. Ct.* (1998) 64 Cal. App. 4th 1496, 1504 (party must conduct a good faith investigation). Instead, they now claim the right to "gain[] the time to respond to the discovery once the scope of what they will be required to produce is determined." Opposition, RoA # 139, at p. 15:20-22. In other words, Defendants will only look through their records once the Court identifies the proper scope of Plaintiff's Requests.

But the Court cannot identify the proper scope of Plaintiff's Requests because Defendants have not met their burden to establish what records exist and how burdensome it would be to collect them and turn them over to Plaintiff. *See Coy v. Sup. Ct.* (1962) 58 Cal.App.2d 210, 220-

[3] Many of the same discovery issues addressed herein are addressed in greater detail in Plaintiff's Opposition to Defendants' Motion for Protective Order ("Opposition to Protective Order"), filed contemporaneously herewith. Plaintiff adopts and incorporates by reference herein the points and authorities contained in his Opposition thereto.

221; *See also Fairmont Insurance Co. v. Sup. Ct.* (2000) 22 Cal.App.4th 245, 255 (the burden is on the responding party to substantiate its objections). Defendants were required to object with "specificity," either in their responses themselves, or in meet and confer. *See Korea Data Systems Co. Ltd. v. Sup. Ct*. (1997) 51 Cal.App.4th 1513, 1516 ("boilerplate objections insufficient). Here, Defendants simply state their same conclusory objections to each Request — whether applicable or not — without any factual basis or explanation. *See Columbia Broadcasting System, Inc. v. Sup Ct*. (1968) 263 Cal.App.2d 12, 19 (to establish "undue burden" or oppression" objecting party must show the amount of work required to respond is excessive compared to the utility of information sought). The proper course is to overrule Defendants objections, and require them to respond to the Requests as written. Any "overbreadth" is then Plaintiff's problem in review.

In addition, Defendants were required to furnish non-objectionable documents and information. *Regency Health Services*, 64 Cal. App.4th at 1504. If Defendants were unable to obtain the information sought, they were required to specify why, and what efforts they made to obtain it. *Deyo v. Kilbourne* (1978) 84 Cal.App.3d 771, 782; CODE OF CIVIL PROC. §§ 2031.010, 2031.230. Here, however, the Defendants have provided *no responsive documents whatsoever* through several months of discovery. Their only excuse for this seems to be the entirely conclusory, cut-and-paste objections they supplied in response to each and every Request.[4]

Here, Defendants have given Plaintiff *nothing* in response to Requests for some of the most relevant categories of documents in this case, such as:

- Any commercial contracts or invoices between and among PLPCC and Shell Companies, such as a consulting agreement between PLPCC and "419 Consulting", or

[4] Plaintiff previously granted Defendants' request for additional time to respond to the discovery Requests at issue. But if all Defendants intended to do in response to these Requests was type up a single paragraph's worth of legal conclusions, and then copy-and-paste that paragraph a few dozen times, it is unclear why Defendants sought additional time to respond in the first place. These discovery responses (or more accurately, *non-r*esponses) should have taken them a few hours to compile, not a few months.

an operating agreement between PLPCC and "Far West Operating", or a staffing agreement between PLPCC and "Far West Staffing";[5]

- Any corporate bylaws or meeting minutes from PLPCC or any of the Shell Companies;
- Communications, such as emails, between PLPCC and the Shell Companies;[6]
- Defendants' corporate financial statements, expense reports, and cash handling procedures; and
- Documents showing the compensation that Knopf and Henkes paid themselves through PLPCC and the Shell Companies during the relevant period.

If Defendants were at all serious about trial preparation, they would have produced *something* by now: but they're not, so they haven't. Instead, Defendants have completely abrogated their responsibility to produce responsive, *non*-objectionable documents, and seek to make this Court specifically compel production of each and every available document. It is not, however, this Court's duty to conduct a reasonable investigation for relevant, non-privileged information. It is entirely Defendants' duty, and they refuse to fulfill it. *See* CAL. CODE OF CIV. PROC. §2031.240(a) (If only part of an item or category demanded is objectionable, the response must contain an agreement to comply with the remainder, or representation of inability to comply). Defendants cannot properly delay their entire production for months while feigning meet-and-confer efforts and blunderbuss objections. *See Gibson v. Superior Court*, No. B181176, 2006 WL 1545101, at *4 (Cal. Ct. App. June 7, 2006) (unpublished).

Defendants' scattershot, unspecified objections should be overruled, and document production should commence immediately.

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[5] Perhaps Defendants are objecting to such basic Requests on "assumes-facts-not-in-evidence" grounds because the PLPCC, in fact, *never had any written agreements with, or actual invoices from, the Shell Companies* from 2014 through 2017. If that is the case, then Defendants are required to respond to Plaintiff's Requests by verifying under penalty of perjury they have no responsive documents, not by hiding this material fact behind amorphous and improper objections. Since it appears that Defendant Henkes ran most of the Shell Companies using nothing but *the same two personal laptops*, it is reasonable to suspect a dearth of substantive operations here.

[6] These may consist only of Defendants Knopf and Henkes personally emailing themselves, but such communications would be relevant to proving Plaintiff's alter ego theory.

III. THE STIPULATED PROTECTIVE ORDER IN THIS CASE SUFFICIENTLY ADDRESSES DEFENDANTS' CONFIDENTIALITY CONCERNS, AND DEFENDANTS MUST PROVIDE A PRIVILEGE LOG TO JUSTIFY WITHHOLDING PARTICULAR DOCUMENTS

First, Defendants spend several pages of their Opposition establishing their purported rights to personal and financial privacy. *See* Opposition at pp. 10-13. After all of that, Defendants conclude as follows:

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

Opposition, RoA # 139 at 11:15-19. Here, the Court has already entered a comprehensive, *stipulated* protective order ("SPO") to guard the parties' confidential information from any disclosure beyond that which is necessary to adjudicate this case. SPO, RoA # 59. The Court's existing SPO expressly prevents the dissemination of non-public personal, employment, medical, financial, and commercially sensitive information. *See* SPO at ¶3 (defining "Confidential Information"). In light of Defendants' own submission to such a comprehensive and well-considered SPO, they cannot abrogate their duty to produce responsive documents. This Court's Protective Order is precisely the type of confidentiality Order that allows the routine, safe and efficient production of private documents in civil litigation nationwide: in both federal and state courts. *E.g., Nativi v. Deutsche Bank Nat'l Tr. Co.* (2014) 223 Cal.App.4th 261, 317-18 (stipulated protective orders are intended to "obviate the need for specific court determination as to the propriety of designating materials confidential.")

Second, Defendants proffer a wide range of purported "privileges" to justify their production of zero documents in this case. But when asserting claim(s) of privilege, an objecting party must provide "sufficient factual information" to enable other parties, and the Court if necessary, to evaluate the merits of the claim, "including, if necessary a privilege log." CAL. CODE OF CIV. PROC. §2031.240(c)(1). Here, Defendants indiscriminately objected on privilege bases to each and every document Request, irrespective of whether the assertion of that privilege makes

sense in context. They also provided no factual information (much less "sufficient factual information") to allow Plaintiff and the Court to address the merits of such assertions.

Defendants' privilege objections clearly and unequivocally call for production of a privilege log documenting each claim of privilege, the basis of such a claim, and any documents withheld on the privilege claim. Plaintiff's counsel has repeatedly requested that Defendants provide one, but as with all substantive discovery activities in this case, Defendants have simply declined to participate. After having Plaintiff's Requests in hand for several months now, Defendants have not produced — and refuse to produce — any privilege log or other particularized claim of privilege. Rather, they blithely assert that everything is privileged and decline to produce a single responsive document on this ground. Accordingly, the Court should overrule all Defendants' scattershot claims of privilege and compel the production of a privilege log for each individual claim.

Lastly, with respect to Defendants' proffered tax return privilege, they argue that "[o]nly one case has found that public policy mandated an exception to the privilege . . . ." Opposition at p. 14. This is simply untrue, as Plaintiff cited at least four such cases. *See, e.g., Schnabel v. Sup. Ct.* (1993) 5 Cal. 4th 704, 722; *Li v. Yan* (2016) 247 Cal.App.4th 56, 66-68; *Slojewski v. Allstate Ins. Co.*, 2013 U.S. Dist. LEXIS 37266, at *9 (N.D. Cal. Mar. 18, 2013); *Garcia v. Progressive Choice Ins. Co.*, 2011 WL 4356209, at * 4 (S.D. Cal. Sept. 16, 2011).

The *Schnabel* case is instructive. There, the California Supreme Court ordered a closely held corporation to produce payroll and tax records in a marital dissolution proceeding because tax records were relevant in ascertaining the value of the husband's shares in the corporation. *Schnabel*, 5 Cal. 4th at 708. The Court weighed "whether the state's policy in favor of full disclosure of information" in marital dissolution proceedings "creates an exception" to the judicially constructed privilege "implied" by REV. & TAX CODE § 19282. The Court cited its earlier decision in *Sav-On Drugs, Inc. v. Sup. Ct.* (1975) 15 Cal.3d 1, 8 that no attempt had been made "to define the full ambit of the privilege." *Schnabel*, at 721. The Court held that the "public policy" exception to the tax return privilege must be found in a "legislatively declared public

policy." *Id.* (emphasis added) citing *Miller v. Sup. Ct.* (1977) 71 Cal.App.3d 145, 149 (the "public policy favoring the confidentiality of tax returns must give way to the greater public policy of supporting child support obligations.")

Defendants cannot credibly argue that the non-profit requirement in California's medical marijuana laws are not a "legislatively declared" public policy. It's explicit in the Health and Safety Code. HEALTH & SAF. CODE § 11362.765(a) (nothing "authorize[s] any individual or group to cultivate or distribute marijuana for profit"). Nor can Defendants argue that it is not a weighty policy. Indeed, the difference between profit and non-profit can be the difference between freedom and jail time. *See People v. Solis* (2013) 217 Cal. App. 4th 51, 54 (criminal defendant who admitted receiving $80,000 in personal income from marijuana collective not entitled to medical marijuana defense). Indeed, Plaintiff and the Class have a stronger – much stronger – interest in ensuring their cooperative is operating legally, than Defendants do in keeping their potentially illegal schemes hidden. *See Li v. Yan* (2016) 247 Cal.App.4th 56, 66-68 (ordering production of tax returns where necessary to effect public policy of "prevent[ing] fraud against creditors. And against lenders. And perhaps against the court.")

IV. CONCLUSION

For the reasons stated above, good cause exists to order Defendants to serve further responses within 14 days, with production to occur no more than 14 days thereafter. Defendants' request for sanctions is frivolous and should be denied.

Respectfully submitted,

DATED: May 11, 2018

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