

1 THE RESTIS LAW FIRM, P.C.  
2 William R. Restis, Esq. (SBN 246823)  
3 550 West C Street, Suite 1760  
4 San Diego, California 92101  
5 +1.619.270.8383  
6 +1.619.752.1552  
7 william@restislaw.com

8 *Attorneys for Plaintiff*

9 [Additional Counsel Listed On Signature Page]

10 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**  
11 **COUNTY OF SAN DIEGO**

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

14 Plaintiff,

15 v.

16 **POINT LOMA PATIENTS CONSUMER**  
17 **COOPERATIVE CORPORATION**, A  
18 California Corporation, **ADAM KNOPF**, an  
19 Individual, **JUSTUS H. HENKES IV**, an  
20 Individual, **419 CONSULTING INC.**, a  
21 California Corporation, **GOLDEN STATE**  
22 **GREENS LLC**, a California LLC, **FAR WEST**  
23 **MANAGEMENT, LLC**, a California LLC,  
24 **FAR WEST OPERATING, LLC**, a California  
25 LLC, **FAR WEST STAFFING, LLC**, a  
26 California LLC, and **DOES 1-50**,

27 Defendants.

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego  
**05/11/2018** at 02:53:00 PM  
Clerk of the Superior Court  
By Jessica Pascual, Deputy Clerk

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

**CLASS ACTION**

**PLAINTIFF'S OPPOSITION TO  
DEFENDANTS' JOINT MOTION FOR  
PROTECTIVE ORDER**

Date: May 24, 2018  
Time: 9:00 a.m.  
Judge: Hon. Joel R. Wohlfeil  
Ctrm: C-73

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1 **I. INTRODUCTION**

2 Despite this litigation being over seven months old, Defendants have refused to produce a  
3 single document or meaningfully answer a single interrogatory. *See* Plaintiff’s Motions to Compel,  
4 RoA # 111 and 117 (blanket objections and evasive responses).<sup>1</sup> This lack of access to discoverable  
5 information has left Plaintiff unable to take depositions or issue subpoenas, because he lacks the  
6 identity of witnesses and documents necessary to frame questions. This is the backdrop to  
7 Defendants’ Joint Motion for Protective Order (the “Motion”), which seeks to foreclose discovery  
8 that is *essential* to Plaintiff’s case in chief. As described below, the information Defendants seek to  
9 protect is needed to (1) audit Defendants’ medical marijuana business, (2) identify witnesses, (3)  
10 establish Defendants’ joint liability, and (4) move for class certification.

11 First, the privacy rights of Defendants and any third parties are adequately addressed by the  
12 Stipulated Protective Order (“SPO”) entered in this case at Defendants’ insistence. *See* RoA # 59.  
13 Knowing this, Defendants have misrepresented the parties’ March 23rd in person meet and confer,  
14 where Plaintiff made considerable concessions to address Defendants’ privacy concerns. They now  
15 misleadingly claim Plaintiff is seeking “employment files” and “medical information” despite never  
16 implicated by the Requests, and disclaimed by Plaintiff in meet and confer.

17 Second, Defendants’ claims of privilege are either addressed through meet and confer,  
18 speculative, or inapplicable to this case. Plaintiff has repeatedly informed Defendants he does not  
19 seek attorney client or work product materials. And Defendants have not met their burden to identify  
20 “with specificity” which documents and information would be self-incriminatory, or that there is a  
21 “substantial and real” risk of criminal jeopardy. Similarly, Defendants’ tax return privilege should  
22 be overruled because the public policies reflected in California’s medical marijuana laws are more  
23 important, the privilege is inconsistent with the gravamen of Plaintiff’s case, and because Defendants  
24 are using it as a weapon to avoid their discovery obligations.

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25 <sup>1</sup> Defendants did respond to Form Interrogatories 1, 3 and 4 with their names, contact  
26 information, corporate status and insurance coverage. Declaration of William R. Restis ISO  
27 Opposition to Joint Motion for Protective Order (“Restis Decl.”), ¶ 2.

1 The Court should order Defendants to respond to Plaintiff’s discovery “on terms and  
2 conditions that are just” so that Plaintiff need not burden the Court with a motion to compel on the  
3 same requests. CIV. PROC. CODE (“CCP”) § 2031.060(g). Finally, the Court should award Plaintiff  
4 his reasonable attorneys’ fees of \$14,650 incurred opposing the Motion because there is no  
5 “substantial justification” for it. *Id.*, § 2031.060(h); Restis Decl., ¶ 9 (22.4 hours x \$650/hour).

6 **A. THE LAWSUIT**

7 Plaintiff is a member patron of Defendant Point Loma Patients Consumer Cooperative  
8 Corporation (the “PLPCC”), a retail and delivery medical marijuana dispensary located in San  
9 Diego. Compl., ¶¶ 1, 13, 21. The PLPCC is wholly owned and controlled by defendants Adam Knopf  
10 and Justus H. Henkes IV (the “Individual Defendants”). *Id.*, ¶¶ 4, 23-24, 35.

11 As a medical marijuana *cooperative* corporation, the PLPCC was required to be non-profit,  
12 and accomplish this objective by returning profits to Plaintiff and the Class as “patronage  
13 distributions.” *Id.*, ¶¶ 32-34, 39-40. Plaintiff’s class action Complaint details how the PLPCC - San  
14 Diego’s largest marijuana dispensary - generated millions of dollars in monthly revenues servicing  
15 approximately 1,000 retail patrons per day. Compl., ¶¶ 1, 37. In the process, the Individual  
16 Defendants generated millions of dollars in revenue beyond their *bona fide* expenses. Compl., ¶¶ 1,  
17 37-40, 86-87.

18 To hide their revenues, and maintain the appearance of a non-profit cooperative, the  
19 Individual Defendants caused the PLPCC to retain various Shell Companies<sup>2</sup> for services such as  
20 “Staffing,” “Management,” “Operating,” “Consulting,” and “Marketing.” *Id.*, ¶¶ 25-28, 39-40, 43,  
21 47, 49, 86-87. The Individual Defendants benefit as the sole directors, executive officers, and  
22 shareholders of each of the Shell Companies. *Id.*, ¶¶ 23-24, 35. These Shell Companies have no  
23 independent business function apart from serving the Individual Defendants and the PLPCC’s  
24 medical marijuana business. *Id.*, ¶¶ 3, 28, 36.

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25  
26 <sup>2</sup> The “Shell Companies” consist of defendants 419 Consulting Inc., Golden State Greens LLC,  
27 Far West Management, LLC, Far West Operating, LLC, and Far West Staffing, LLC.

**B. THE DISCOVERY**

The discovery that is the subject of Defendants’ Motion is summarized in the table below.

“ID” refers to Individual Defendants, “SC” refers to Shell Companies, and “PLC” refers to PLPCC:

<b>DOC DEMANDS (SET 2)</b>	<b>SUBJECT MATTER</b>
ID #11; SC # 12; PLC # 8	Tax returns and amended returns with attachments
ID #12; SC # 13; PLC # 9	Communications with tax agencies
ID # 13; SC # 14; PLC # 10	K-1s, 1099s and W-2s
ID # 14; SC # 15; PLC # 11	Contracts between SC / PLC / ID, e.g., employment and loan contracts, buy/sell and deferred compensation agreements
ID # 15	Mirror image of personal bookkeeping software, e.g., Quicken
SC # 16; PLC # 12	Documents that comprise SC / PLC general ledger
ID # 16; SC # 17; PLC # 13	Financial statements including opinion letters, and professional reports
ID # 17; SC # 18; # PLC 14	Documents reflecting loans to or from any Defendant
ID # 18; SC # 19; PLC # 15	Documents reflecting accounts at financial institutions [e.g., bank, stockbroker, cryptocurrency] including statements, checks, deposit receipts
ID # 19; SC # 21; PLC # 17	Documents including statements and benefit summaries for retirement accounts such as IRA, 401(k), profit sharing and pension
SC # 20; PLC # 16	Employment manual and benefits summary for owners, employees and independent contractors
ID # 20	Documents relating to any trust in which ID have a legal or beneficial interest
ID # 21; SC # 22; PLC # 18	Expense account reimbursement policies, forms and schedules from any Defendant
ID # 22	Credit card statements
ID & SC # 23; PLC # 19	Documents reflecting real estate holdings, and debt / leases thereon
ID # 24	Complaints in any lawsuits in which ID is/was a party
ID # 25	Documents reflecting gifts or loans from ID to spouse or family
SC # 25; PLC # 21	Documents re SC budgets, forecasts, appraisal or projections
ID # 26; SC # 24 & 26; PLC # 20 & 22	Billing records with any CPA or business attorney

1	ID # 27; SC # 28; PLC # 24	Communications with any CPA
2	SC # 27; PLC # 23	Engagement letters with any CPA
3	ID # 28; SC # 29; PLC # 25	Documents reflecting transactions of property with any CPA
4	SC # 30; PLC # 26	Business organizing documents, e.g., charters, minutes, stock transfer logs, shareholder / partnership agreements, docs reflecting officers / directors and percentage of ownership
5		
6	<b>DOC DEMANDS (SET 3)</b>	
7	PLC # 27	Documents and communications that relate to Plaintiff Karl Beck
8	<b>SPECIAL ROGS (SET 2)</b>	
9	SC & PLC # 8	Identify past and current employees (name, address, email, telephone)
10	SC & PLC # 9	Identify past and current independent contractors (name, address, email telephone for individuals, legal business name and any d/b/a for entities)
11		
12	SC & PLC # 10	Identify time period of employment for employees
13	SC & PLC # 11	Identify time period of employment for independent contractors
14	SC & PLC # 12	Identify each safety deposit box in which any Defendant has legal / beneficial interest by institution, address and box number
15		
16	SC & PLC # 13	Identify each safe/lock box in possession, custody, control of any defendant by brand, model and current location
17	<b>SPECIAL ROGS (SET 3)</b>	
18	PLC # 14	State total number of class members

19 **II. LEGAL STANDARDS ON MOTION FOR PROTECTIVE ORDER**

20 The party opposing discovery “bears the burden” of demonstrating good cause why the  
21 discovery should be restricted. *Sinaiko Healthcare Consulting, Inc. v. Pac. Healthcare Consultants*  
22 (2007) 148 Cal.App.4th 390, 402. Declarations made in support of such a motion cannot be  
23 “conclusory” or “lack[] any factual specificity.” *Nativi v. Deutsche Bank Nat’l Tr. Co.* (2014) 223  
24 Cal.App.4th 261, 318; *People v. Superior Court (Witzerman)* (1967) 248 Cal.App.2d 276, 281-282  
25 (declaration containing mere conclusions insufficient to establish good cause); *cf. In re Roman*  
26 *Catholic Archbishop of Portland in Oregon* 661 F.3d 417, 424 (9th Cir. 2011) (“Broad allegations



1 of harm, unsubstantiated by specific examples or articulated reasoning, do not satisfy the Rule 26(c)  
2 test.”).

3 **III. ARGUMENT**

4 **A. THE DISCOVERY IS NECESSARY TO PROVE PLAINTIFF’S CASE IN**  
5 **CHIEF**

6 In considering whether to grant a motion for protective order, the court takes into account  
7 “the needs of the case, the amount in controversy, and the importance of the issues at stake in the  
8 litigation.” *People v. Sarpas* (2014) 225 Cal.App.4th 1539, 1552; CCP § 2019.030(b) (same). As  
9 will become clear below, the true purpose of Defendants’ Motion is not to protect confidential  
10 information, but to prevent Plaintiff from proving his case for the benefit of absent class members.

11 i. Evidence Necessary to Conduct an Audit

12 Plaintiff’s Complaint alleges that through *inter alia* the Shell Companies, the Individual  
13 Defendants have retained millions of dollars in revenue beyond their *bona fide* expenses. Compl.,  
14 ¶¶ 1, 37-40, 86-87, 95; *cf. People v. Anderson* (2015) 232 Cal.App.4th 1259, 1277 (a cooperative  
15 “may not earn a profit from growing or distributing medical marijuana,” operators are only entitled  
16 to “receive reasonable compensation and reimbursement of out-of-pocket expenses for labor or  
17 services rendered”).

18 Plaintiff cannot prove that Defendants have generated and illegally retained profits from  
19 marijuana sales without an audit *of each of them*. This is because a cost to the PLPCC is revenue to  
20 the Shell Companies and/or Individual Defendants. With the assistance of a forensic accountant,  
21 Plaintiff identified gaps in Requests for Production (Set One) to all Defendants and drafted Requests  
22 for Production (Set Two) to further track the flow of funds from the PLPCC through the Shell  
23 Companies to the Individual Defendants. Restis Decl., ¶ 3. This requires bookkeeping records,  
24 general ledgers, financial statements and opinion letters, expense account documentation, credit card

1 statements, budgets, forecasts, and projections, as well as tax return documentation, loans, buy/sell  
2 and deferred compensation agreements between the Defendants.<sup>3</sup>

3 Because the PLPCC operates as an all-cash business, Plaintiff must be able to identify and  
4 locate flows and stores of cash, which are easily concealed. *See* SROGs to SC & PLC # 12  
5 (identification and location of safe deposit boxes and safes). If the Complaint is correct that the  
6 Individual Defendants are concealing profits from the sale of medical marijuana, these Defendants  
7 would have to convert that cash into assets. Thus, it is probable that Defendants have converted the  
8 PLPCC cash into various assets such as bank accounts, stock accounts, real estate, employee  
9 benefits, retirement accounts, loans or gifts to friends and family, cryptocurrencies, and trusts.<sup>4</sup>

10 In the same way, Defendants may have concealed revenues by making inflated payments to  
11 professionals (*e.g.*, accountants or attorneys), particularly considering Defendant Henkes is himself  
12 a CPA. RFP to ID # 26-28; SC # 24, 26-29; PLC # 20, 22-25 (engagement letters with CPA, billing  
13 records for CPA and business attorney, transactions of property with CPA). During meet and confer,  
14 Plaintiff clarified he is only seeking documents reflecting gross billing amounts from corporate  
15 attorneys to determine if, for example only, profits from medical marijuana sales are hidden in  
16 refundable “retainers” in attorney trust accounts. Restis Decl., ¶ 4. In other words, Plaintiff is not  
17 seeking attorney client or privileged information. *See also* Restis Decl., Ex. A, Restis Ltr 3/9/18 at  
18 p. 2 (“Plaintiff of course does not expect Defendants to produce [attorney client / work product]  
19 privileged materials.”).

20 ii. Evidence Necessary to Establish Alter-Ego / Conspiracy Liability

21 Plaintiff pleads various theories of liability for Defendants, including direct and indirect  
22 liability under the UCL. *See e.g.*, *Sarpas*, 225 Cal.App.4th at 1563-64 (UCL liability extends to  
23 corporate officers that provide “substantial assistance or encouragement”). The Individual  
24 Defendants and Shell Companies are also vicariously liable under theories of alter-ego and civil

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25 <sup>3</sup> RFP to ID # 11-17, 21-22 ; SC # 12-18, 22, 25; PLC # 8-14, 18, 21.

26 <sup>4</sup> *See* RFP to ID # 17-21, 23, 25; SC # 18-21, 23; PLC # 15-17, 19.

1 conspiracy. *E.g., VirtualMagic Asia, Inc. v. Fil-Cartoons, Inc.* (2002) 99 Cal.App.4th 228, 245 (in  
2 deciding alter ego liability, courts consider “inadequate capitalization, commingling of funds and  
3 other assets of the two entities, ... identical equitable ownership in the two entities, use of the same  
4 offices and employees, use of one as a mere conduit for the affairs of the other, disregard of corporate  
5 formalities, lack of segregation of corporate records, and identical directors and officers.”).

6 Thus, Plaintiff must be able to establish how the Defendants are inter-related by stock  
7 ownership and transfer, shareholder agreements, and interlocking officers and directors. *See* Request  
8 # 30 SC; and # 26 PLC, *supra*.

9 iii. Evidence Necessary to Identify Witnesses

10 Special Interrogatories 8-11 to the PLPCC and each of the Shell Companies ask these  
11 Defendants to identify past and current employees and independent contractors, as well as the time  
12 periods these people worked for Defendants. Defs’ Joint Notice of Lodgment ISO Motion for  
13 Protective Order, RoA # 104, Exs. A-F (Special Interrogatories [Set Two]). For individuals, Plaintiff  
14 asks that Defendants identify these witnesses’ name, phone numbers, e-mail addresses, and last  
15 known mailing address. *E.g., id.*, Ex. A at p. 1. For independent contractors that are legal entities,  
16 Defendants are asked to provide their business name as registered with the Secretary of State, and  
17 any known d/b/a. *Id.*

18 iv. Evidence Necessary to Certify A Class

19 To satisfy the elements of class certification, Plaintiff must demonstrate that there is a  
20 sufficiently “numerous” class, and that his claims are “typical” of absent class members. *Kaldenbach*  
21 *v. Mut. of Omaha Life Ins. Co.* (2009) 178 Cal.App.4th 830, 843. The number of absent class  
22 members (SROG # 14 to PLPCC) is the *only* inquiry relevant to establishing numerosity. In addition,  
23 all information related to Plaintiff Beck (RFP # 27 to PLPCC) is relevant to establishing his typicality  
24 to represent absent class members. Defendants’ Motion on these topics is completely unnecessary,  
25 as they fail to even assert rights or privileges that constitute a basis to object.

1                   **B. THE STIPULATED PROTECTIVE ORDER ADEQUATELY ADDRESSES**  
2                   **PRIVACY CONCERNS**

3                   The lack of good cause for Defendants’ Motion is exemplified by the *existing* SPO entered  
4                   **at Defendants’ insistence** because stipulated protective orders “obviate the need for specific court  
5                   determination as to the propriety of designating materials confidential.” *Nativi*, 223 Cal.App.4th at  
6                   317-18; *see Hill v. National Collegiate Athletic Ass’n* (1994) 7 Cal.4th 1, 38 (“[I]f intrusion [into  
7                   private matters] is limited and confidential information is carefully shielded from disclosure except  
8                   to those who have a legitimate need to know, privacy concerns are assuaged.”) (emphasis added).<sup>5</sup>

9                   The parties already negotiated terms that were intended to cover the same topics as  
10                  Defendants’ Motion. The SPO states that “Defendants have requested” and “believe good cause  
11                  exists” to protect information from disclosure because “this Action may involve the potential  
12                  production and disclosure of personal records of consumers, employment records, confidential  
13                  health and medical information and proprietary or confidential information and trade secrets during  
14                  the pendency of this action....” SPO, RoA # 59, at p. 2, ¶ 1. These are the same categories of  
15                  information that Defendants’ Motion seeks to “protect.” *See* Motion P&A at § III.A.1-3 (“financial  
16                  right to privacy,” “privacy in [ ]employment information”, and “medical information”).

17                  The SPO allows Defendants to designate any discovery materials as “CONFIDENTIAL,”  
18                  which restricts review and disclosure to “qualified recipients” with a legitimate need to access it.  
19                  SPO, ¶¶ 4, 6. The SPO requires CONFIDENTIAL INFORMATION to “be held in confidence by  
20                  each receiving party” and used only “for purposes of this Action ... and not for any business,  
21                  competitive or other purpose....” SPO, ¶ 8. CONFIDENTIAL INFORMATION cannot “be  
22                  disclosed to, or the substance discussed with, any person who is not a qualified recipient....” *Id.* And  
23                  CONFIDENTIAL INFORMATION used in Court filings must be filed/lodged under seal. *Id.*, ¶ 11.

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24                  <sup>5</sup> When Plaintiff propounded his first set of discovery, Defendants insisted on *stipulating* to a  
25                  protective order to avoid *motions* on this issue. *See* Restis Decl., Ex. B, Dart e-mail (“We will also  
26                  need an appropriate protective order in place prior to production of documents. ... [Restis Objects]  
27                  ... We can proceed without a stipulated protective order, but we will be taking discovery positions  
28                  consistent with the above, and litigating those issues will be costly and time consuming for all. A  
29                  stipulated protective order is the better approach, in our view.”) (emphasis added).

1 In the parties March 23rd meet and confer, Plaintiff offered to amend the SPO to include a  
2 category of information designated “ATTORNEYS EYES ONLY” that would further restrict review  
3 and disclosure to counsel and their immediate staff. Restis Decl. ¶ 4. Defendants’ counsel agreed to  
4 draft such an amendment, but failed to do so. *Id.* Instead, they filed this Motion.

5 In other words, the SPO – with or without attorneys eyes only designation – is more than  
6 adequate to address the privacy concerns of Defendants and third parties.

7 **C. DEFENDANTS’ “SPECIAL” CLAIMS OF PRIVACY ARE FRIVOLOUS**

8 Defendants argue that an additional protective order is warranted because “[t]he facts  
9 preclude the unwarranted dissemination of a potentially significant amount of [Defendants’ and third  
10 parties’] private information, including financial, employment, and medical information...” Motion  
11 P&A at pp. 8:28-9:2.

12 Specifically, Defendants assert that “Plaintiff’s discovery demands employment information  
13 and employee records...” Motion P&A at p. 9:23. As such, “discovery related to employment  
14 should be precluded because it is irrelevant and there is no demonstrable need for Plaintiff to access  
15 employment files.” *Id.*, at p. 10:8-9. But there’s a huge problem with Defendants’ argument. Plaintiff  
16 has only sought *identification of* employees, not “personnel files” or “employment records.” *See*  
17 SROGs # 8-11 to PLPCC and Shell Companies, *supra*.

18 Employees and independent contractors are key witnesses, and identifying them is so basic  
19 to civil discovery that Plaintiff’s entitlement is beyond dispute. *See Puerto v. Superior Court* (2008)  
20 158 Cal.App.4th 1242, 1249-50 (“Central to the discovery process is the identification of potential  
21 witnesses. ‘The disclosure of the names and addresses of potential witnesses is a routine and essential  
22 part of pretrial discovery.’ [Citations].”)<sup>6</sup>

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23 <sup>6</sup> Earlier in this litigation, Plaintiff asked the Court to take judicial notice of an employment lawsuit  
24 by a former dispensary employee who alleged she was employed by Shell Company defendant Far  
25 West Management, LLC, and the Individual Defendants. *See* Restis Decl. ISO Mot. Per Corp. Code  
26 §§ 12603-07, RoA # 15, Ex. 8 (First Amended Complaint in *Brown v. PLPCC et al.*, No. 37-2017-  
27 25128-CU-OE-CTL [S.D. Sup. Ct.]). The former employee alleged that these “Defendants paid  
28 Plaintiff part of her compensation in cash... [and] failed to provide Plaintiff with pay stubs which

1 To the extent that Defendants’ financial records may implicate employee privacy, for  
2 example by identifying wages or salaries to specific employees, such privacy rights are protected by  
3 the SPO. And if Defendants are truly concerned, they can redact employee information provided  
4 redaction does not conceal fund transfers necessary to conduct an audit. Restis Decl., ¶ 4 (“At [the  
5 March 23<sup>rd</sup> in person] meet and confer... I clarified that ...Plaintiff is not seeking any employee  
6 files” and that “unless clear from the context of the Request, [Plaintiff’s outstanding discovery]  
7 should be construed as asking for documentation that supports the flow of every dollar to and through  
8 Defendants, to allow Plaintiff to conduct a forensic audit ...”)

9 Defendants’ “medical information” argument is even more spurious. *See* Motion P&A at p.  
10 11:11-13 (“Any information Plaintiff seeks that divulges or discloses information related to  
11 PLPCC’s [*sic.*] is protected under the CMIA and such discovery should be precluded.”).

12 But Defendants have failed to identify a single Request that seeks the medical information  
13 of PLPCC patrons. Plaintiff *has never requested class member medical information, does not intend*  
14 *to, and notified Defendants of this fact in meet and confer.* Restis Decl., ¶ 4 (“At [March 23<sup>rd</sup> in  
15 person] meet and confer ... I clarified that Plaintiff’s outstanding discovery requests should be  
16 construed as ... [n]ot requesting any medical information related to any class member.”) *cf.* Motion  
17 P&A at p. 3:24-26 (“Plaintiff refused to withdraw or narrow a single request” and as such  
18 “Defendants are forced to seek this Court’s protection and assistance.”)

19  
20  
21 included an accurate itemized statement indicating gross wages earned....” *Id.*, ¶ 39. She also alleged  
22 she was terminated “in retaliation for making complaints regarding the payment of her wages.” *Id.*,  
23 ¶ 59. Similarly, in a sworn declaration, Defendant Knopf admitted that Defendant Far West  
24 Operating, LLC “manages PLPCC’s staffing and employment services in exchange for payment  
25 from PLPCC... since [PLPCC’s] opening.” Knopf Decl. ISO Opp. Mot. Per Corp. Code §§ 12603-  
26 07, RoA # 27, ¶ 17; *see also id.*, ¶ 36 (“Far West Management, LLC was formed as [Far West  
27 Operating, LLC]’s wholly owned subsidiary to handle management services and defendant Far West  
28 Staffing, LLC was formed as FWO’s wholly owned subsidiary to handle staffing services.”); *id.*, ¶  
37 (“The individuals FWO manages and uses to staff PLPCC are all Associate members of  
PLPCC....”).

1           However, Plaintiff will require access to the PLPCC’s (anonymized) transaction records with  
2 class members because revenue generated from the PLPCC’s marijuana sales is *the* key component  
3 necessary to perform an audit.<sup>7</sup> To the extent Defendants believe this constitutes “medical  
4 information,” such objection should be overruled.

5           **D. PLAINTIFF IS NOT SEEKING PRIVILEGED ATTORNEY-CLIENT**  
6           **DOCUMENTS**

7           The only item Defendants have identified where Plaintiff could be construed as seeking  
8 attorney-client communications or attorney work product is a request for billing records from the  
9 PLPCC and Shell Companies’ business attorneys. *See* RFP # 20 to PLPCC and # 24 to Shell  
10 Companies, *supra*.

11           In the parties’ March 23rd meet and confer, Plaintiff informed Defendants that the purpose  
12 of seeking billing records from business attorneys is to identify any suspicious movements of funds.  
13 As such, Plaintiff is not interested in attorney narratives found in billing records, and notified  
14 Defendants as such in meet and confer. Restis Decl., ¶ 4; *also id.*, Ex. A at p. 2 (“Plaintiff of course  
15 does not expect Defendants to produce [attorney client / work product] privileged materials.  
16 However, Plaintiff will require the production of a privilege log for responsive materials that are  
17 withheld.”) Defendants’ Motion on this issue is a waste of party and Court resources.

18           **E. THE INDIVIDUAL DEFENDANTS HAVE FAILED TO ESTABLISH A**  
19           **CREDIBLE THREAT OF INCRIMINATION**

20           The Individual Defendants argue that “[w]itnesses may not be compelled to incriminate  
21 themselves.” Motion P&A at p. 12:5. A further protective order is purportedly necessary to “protect  
22 [the Individual Defendants] from making any disclosures in this litigation as it seems everything  
23 they say and do, according to Plaintiff, could subject them to criminal charges.” *Id.*, at p. 13:3-4  
24 (emphasis added).

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25  
26           <sup>7</sup> On this issue, Defendants’ Motion is premature. Plaintiff has not yet propounded discovery  
27 seeking the PLPCC’s transaction records with absent class members.

1 As an initial matter, the privilege against self-incrimination rarely extends to documents  
2 *voluntarily prepared*, even if they are incriminatory, because there is no “testimonial compulsion.”  
3 *See United States v. Doe*, 465 U.S. 605, 610 (1984) (requiring production of business records of a  
4 sole proprietor showing illegal transactions). And “an individual cannot rely upon the privilege to  
5 avoid producing the records of a collective entity which are in his possession in a representative  
6 capacity, even if these records might incriminate him personally.” *Bellis v. United States*, 417 U.S.  
7 85, 88 (1974).

8 But more importantly, it is for the Court to decide whether the Individual Defendants may  
9 invoke the privilege. *Fuller v. Superior Court* (2001) 87 Cal.App.4th 299, 305. The court must  
10 conduct “*a particularized inquiry, deciding, in connection with each specific area that the*  
11 *questioning party seeks to explore*, whether or not the privilege is well founded.” *Id.* citing *Warford*  
12 *v. Medeiros* (1984) 160 Cal. App. 3d 1035, 1045 (emphasis in original). This principle applies in  
13 both civil and criminal proceedings, and under both the federal and state Constitutions. *Warford*,  
14 160 Cal. App. 3d at 1045; *Blackburn v. Superior Court* (1993) 21 Cal.App.4th 414, 428; *Alvarez v.*  
15 *Sanchez* (1984) 158 Cal. App. 3d 709, 712. Only after the party claiming the privilege objects with  
16 specificity to the information sought can the court make a determination about whether the privilege  
17 may be invoked. *Fuller*, 87 Cal.App.4th at 305 citing *Blackburn*, 21 Cal.App.4th at 428.

18 The court should consider *inter alia*, “1) the nature of the information sought to be disclosed,  
19 2) implications derived from the question asked, [and] 3) the nature and verifiability of any  
20 investigation or proceeding claimed to justify the fear of incrimination, or the possibility that any  
21 such investigation or proceeding may be commenced ...” *Blackburn*, at 429 (citing cases). This is  
22 because “[t]he central standard for the privilege's application has been whether the claimant is  
23 confronted by *substantial and 'real,' and not merely trifling or imaginary*, hazards of  
24 incrimination....” *Marchetti v. United States* (1968) 390 U.S. 39, 53-54.

25 In this case, the Individual Defendants cannot rely on the privilege to restrict production of  
26 their financial records because the creation of such documents was voluntary and they are not



1 “testimonial.” *Doe*, 465 U.S. at 610-11 (“[T]he Fifth Amendment protects the person asserting the  
2 privilege only from *compelled* self-incrimination. [Citation] Where the preparation of business  
3 records is voluntary, no compulsion is present.”). The requested materials also relate to the  
4 Individual Defendants’ roles as officers, directors and payees of the PLPCC and Shell Companies,  
5 similarly precluding application of the privilege. *Bellis*, 417 U.S. at 88.

6 But even if the Individual Defendants were entitled to invoke the privilege, they have not  
7 met their burden to identify specific categories of information that tend to incriminate. *Blackburn*,  
8 21 Cal.App.4th at 431 (“Blackburn’s blanket refusal to provide information is unacceptable. He must  
9 claim the privilege with specific reference to the particular testimony sought.”). Nor have  
10 Defendants articulated how producing information under cover of the SPO – which requires  
11 confidential information to be sealed in court filings – can lead to a “substantial and real” risk of  
12 incrimination.

13 There are no “concurrent civil and criminal proceedings.” *People v. Coleman* (1975) 13 Cal.  
14 3d 867, 885. This case has been part of the public record for more than seven months, and no  
15 prosecutors have come knocking. The reason is that Defendants’ objections are “trifling [and]  
16 imaginary” and should be overruled. *Marchetti*, 390 U.S. at 53-54.

#### 17 **F. DEFENDANTS’ TAX-RETURN PRIVILEGE SHOULD NOT APPLY**

18 Under the Corporations Code, a cooperative must be “democratically controlled” and “not  
19 organized to make a profit for [the cooperative’s owners], as such, or for their members, as such, but  
20 primarily for their members as patrons.” CAL. CORP. CODE § 12201 (emphasis added). To  
21 accomplish this statutory objective, “[t]he earnings and savings of the business must be used for the  
22 general welfare of its members or equitably distributed to members in the form of cash, property,  
23 credits, or services.” *Id.*; also ISRAEL PACKEL, LAW OF COOPERATIVES, § 56 at p. 259 (3d ed. 1956)  
24 (“[A]s representatives of the cooperative *in a fiduciary capacity*, [directors and officers] should not enter  
25 into transactions with the cooperative in bad faith or without full disclosure, for the purpose of making  
26 personal profits.”) (emphasis added).

1           The important non-profit, fiduciary, and member participation policies found in the  
2 Cooperative Corporations Code and medical marijuana laws are exactly the type of overriding policy  
3 concerns that courts hold trump the tax return privilege. *See Schnabel v. Sup. Ct.* (1993) 5 Cal. 4th  
4 704, 722 (ordering disclosure of tax returns because “legislatively declared public policy in favor of  
5 full disclosure in a marital dissolution proceeding, warrant an exception to the privilege in this case  
6 limited to those tax returns that are reasonably related to the purpose for which they are sought”); *Li*  
7 *v. Yan* (2016) 247 Cal.App.4th 56, 66-68 (ordering production of tax returns where necessary to  
8 effect public policy of “prevent[ing] fraud against creditors. And against lenders. And perhaps  
9 against the court.”); *Slojewski v. Allstate Ins. Co.*, 2013 U.S. Dist. LEXIS 37266, at \*9 (N.D. Cal.  
10 Mar. 18, 2013) (in insurance fraud case, ordering production of tax returns subject to protective order  
11 because “the disclosure of the tax returns at issue here is supported by the public policy in  
12 uncovering, preventing and punishing insurance fraud in California”); *Garcia v. Progressive Choice*  
13 *Ins. Co.*, 2011 WL 4356209, at \* 4 (S.D. Cal. Sept. 16, 2011) (“The Court finds that this public  
14 policy in uncovering, preventing and punishing insurance fraud is significant enough to warrant  
15 application of the public policy exception to California's privilege regarding tax returns.”)

16           In addition, the gravamen of Plaintiff’s lawsuit is inconsistent with the privilege because tax  
17 returns, and the profits they show, “directly implicate” Class member rights under the Corporations  
18 Code. *Small v. Travelers Prop. Cas. Co. of Am.*, 2010 U.S. Dist. LEXIS 61308, at \*3-8 (S.D. Cal.  
19 June 2, 2010) (ordering production of tax return documents pursuant to protective order *attorneys*  
20 *eyes only* where the gravamen of the lawsuit “directly implicates” financial information contained  
21 in returns and because the privilege is “qualified, not absolute”).

22           Finally, Defendants have completely stonewalled Plaintiff’s efforts to obtain documentation  
23 that would allow an audit. Defendants have not answered a single item of discovery. In this situation,  
24 where Defendants are hiding behind the privilege, it is overruled. *Weingarten v. Sup. Ct.* (2002) 102  
25 Cal.App.4th 268, 275 (“[Defendant] Weingarten intentionally interfered with plaintiffs' ability to  
26

1 obtain relevant information through legitimate means, and then sought to hide behind the tax return  
2 privilege to ensure no relevant information would be revealed to plaintiffs.”)

3 **IV. CONCLUSION**

4 Defendants’ Motion should be denied, and they should be required to fully and completely  
5 respond to Plaintiff’s inspection demands and special interrogatories “on terms and conditions that  
6 are just.” CCP § 2031.060(g). And because Defendants’ Motion is without “substantial  
7 justification,” perhaps even downright frivolous, the Court should award Plaintiff his **reasonable**  
8 **attorneys’ fees of \$14,650**. Restis Decl., ¶ 9 (“I spent 22.4 hours opposing Defendants’ Motion,  
9 comprised of: 3.3 hours researching the law applicable to the Motion, 5.6 hours reviewing and citing  
10 the discovery requests and the record in this case, and 13.5 hours drafting and editing the  
11 Opposition.”); CCP § 2031.060(h) (sanctions available for responding to frivolous motions for  
12 protective order).

13  
14  
15 DATED: May 11, 2018

Respectfully submitted,

THE RESTIS LAW FIRM, P.C.

/s/ William R. Restis

William R. Restis, Esq.  
550 West C Street, Suite 1760  
San Diego, CA 92101  
Tel: +1.619.270.8383  
Email: william@restislaw.com

**FINKELSTEIN & KRINSK LLP**

Jeffrey R. Krinsk (SBN 109234)  
Email: jrk@classactionlaw.com  
550 West C Street, Suite 1760  
San Diego, CA 92101  
Telephone: (619) 238-1333  
Facsimile: (619) 238-5425

*ATTORNEYS FOR PLAINTIFF KARL BECK*