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

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

19 Plaintiff,

20 vs.

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

27 Defendants.
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Superior Court of California,
County of San Diego

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

CLASS ACTION

**DEFENDANTS' JOINT REPLY IN
SUPPORT OF MOTION FOR
PROTECTIVE ORDER**

Judge: Hon. Joel Wohlfeil
Dept.: 73
Date: May 24, 2018
Time: 9:00 a.m.

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

1 Defendants Point Loma Patients Consumer Cooperative Corporation (“PLPCC”), Adam
2 Knopf, Justus Henkes, 419 Consulting Inc., Golden State Greens, Far West Management, Far
3 West Operating, and Far West Staffing (collectively “Defendants”) respectfully submit the
4 following reply memorandum in support of Defendants’ Joint Motion for Protective Order
5 (“Motion”).

6 The Court is now familiar with this case and the myriad discovery issues plaguing the
7 process, all caused by Plaintiff’s “shotgun” discovery methods inclusive of more than 40 sets and
8 400+ requests. By this motion for a protective order, Defendants simply seek to put reasonable
9 and lawful limits on that discovery. Defendants look forward to discussing these issues with the
10 Court at the upcoming hearing.

11 **I. THE COURT SHOULD GRANT A PROTECTIVE ORDER**

12 **A. Defendants Seek Reasonable and Lawful Limitations on Discovery**

13 Defendants’ Motion does not seek to preclude Plaintiff from conducting discovering
14 relevant to his claims. It does not seek to shield evidence related to his claims. Defendants seek
15 only reasonable and lawful limitations on Plaintiff’s demands of unfettered discovery into every
16 aspects of the business and personal lives of eight defendants. Unfortunately, Defendants
17 ultimately were required to seek the Court’s intervention in this matter.

18 **B. The Stipulated Protective Order is Not Enough**

19 The stipulated protective order in this case protects against the disclosure, outside the
20 context of this litigation, of certain types of information *that have been produced*. But it says
21 nothing about the types or quantity of scope of documents and evidence demanded by Plaintiff.
22 The instant Motion addresses, *inter alia*, the overbreadth and “shotgun” approach to discovery
23 pursued by Plaintiff, as well as the production of certain documents in the first instance.

24 **C. Plaintiff Imagines a Conspiracy to Justify Seeking Attorney Billing Records**

25 Plaintiff’s opposition admits that (1) his requests to Defendants demand production of
26 attorney billing records, and (2) in meet and confer efforts counsel refused to withdraw it. The
27 opposition now claims, for the first time, that Plaintiff’s interest in attorney billing records is to
28

1 identify “any suspicious movements of funds.” (Oppo to Motion, p. 11, ln. 11-12.) Zero case law
2 is offered to support such an intrusive demand. Instead, Plaintiff calls Defendants’ inclusion of
3 this issue in the Motion a “waste of party and Court resources.” Again, the sole justification for
4 Plaintiff’s continued pursuant of *attorney billing records* is the baseless assertion of potentially
5 suspicious movement of funds between attorney and client. That inferred conspiracy and potential
6 criminality between Defendants and their attorneys is not only insulting, but is truly a “waste of
7 party and Court resources.”

8 **D. The Individual Defendants’ Threats of Incrimination Stem from Plaintiff’s**
9 **Counsel And Warrants The Protective Order**

10 Defendants’ motion for a protective order requests “that the Court enter a protective order
11 that protects [the Individual Defendants] from making any disclosures in this litigation.” (Motion
12 for Protective Order, p. 13, ln 2-4.) The Individual Defendants’ concern stems from months of
13 statements from Plaintiff’s counsel warning Defendants that evidence from this litigation will
14 make its way into the public record and “unleash a chain of events outside of your control.”
15 Plaintiff and his counsel had alleged and argued, in pleadings, in demand/threat letters, in Plaintiff
16 counsel’s public blog posts, and in meet and confer discussions that patrons of PLPCC who
17 purchased any products from PLPCC have committed criminal offenses, and the officers and
18 directors of PLPCC and other defendants committed significant criminal offenses and conspired
19 to commit others

20 Plaintiff now argues that, despite months of threats of criminality, that the Individual
21 Defendants should not be protected from potentially incriminating statements. Cal. Civ. Proc.
22 Code § 2017(a) allows discovery into any matter, not privileged, that is relevant to the subject
23 matter involved in the pending action. Cal. Evid. Code § 940 excludes from discovery
24 information which may tend to incriminate a party. This principle has been construed to allow
25 assertion of the privilege against self-incrimination in any proceeding, civil or criminal,
26 administrative or judicial, investigatory or adjudicatory. Privileged matters thus lie beyond the
27 reach of discovery and trial courts may not compel individuals to make responses that they
28 reasonably believe could tend to incriminate them or subject them to criminal prosecution. *Fuller*

1 v. *Superior Court* (2001) 87 Cal. App. 4th 299, 302.

2 Plaintiff's reliance on *Blackburn* is misguided. In *Blackburn v. Superior Court* (1993) 21
3 Cal.App.4th 414, a civil case arising out of child molestation, the statute of limitations for
4 criminal prosecution barred prosecution at the time of privilege was claimed. Since the civil
5 defendant could not be criminally punished, the privilege did not apply.

6 Plaintiff's own threats have made it clear to the Individual Defendants that criminal
7 offenses have allegedly occurred and the Individual Defendants could be criminally punished. As
8 such, a protective order is necessary in light of Plaintiff's allegations and his counsel's threats of
9 criminality.

10 **E. Defendants' Tax Return Privilege Applies**

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

17 Here, Plaintiff relies on case law where the tax return privilege was not upheld in the
18 interests of public policy due to insurance fraud, and fraud against creditors, lenders, and the
19 court. None of those situations applies here because Plaintiff has not pleaded fraud. In fact,
20 Defendants' have already asserted the tax return privilege in this case and this Court upheld that
21 privilege in its May 15, 2018 Tentative Ruling stating, "Defendant's assertion of the tax return
22 privilege is SUSTAINED."

23 The same should hold true on this Motion. Plaintiff's contention that the tax return
24 privilege should not apply is not supported by any case law with facts similar or analogous to this
25 case.

26 **II. SANCTIONS ARE NOT WARRANTED**

27 Discovery sanctions are permissible when a discovery motion is brought or opposed
28 unsuccessfully and the party to be sanctioned *acted without substantial justification.* (*Argaman v.*

1 *Ratan* (1999) 73 Cal.App.4th 1173, 1177 (emphasis added); *Foothill v. Lyon/Copley Corona*
2 *Associates* (1996) 46 Cal.App.4th 1542, 1557; California Code of Civil Procedure §§2023.010(a),
3 2023.030(a), 2025.420(d).)

4 This Court has recognized that Plaintiff has taken a shotgun approach to discovery and his
5 continued approach will be less likely to be persuasive. Defendant's Motion for Protective Order
6 seeks a necessary barrier against Plaintiff's zealous discovery practices. Defendant has not acted
7 without substantial justification and Plaintiff's claim of frivolity is not based in fact, but rather a
8 desire to recover attorney's fees. It is disingenuous for Plaintiff to paint his request in any other
9 way.

10 **III. CONCLUSION**

11 For the foregoing reasons, Defendants respectfully request the Court grant their Motion
12 and to limit the scope of allowable discovery.

13
14 Dated: May 18, 2018

AUSTIN LEGAL GROUP, APC

15
16 By: 

Gina M. Austin/Tamara Leetham,
Attorneys for Point Loma Patients
Consumer Cooperative Corporation,
Golden State Greens, LLC, Far West
Management, LLC, Far West Operating,
LLC, and Far West Staffing, LLC

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