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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  
SUPPORT OF MOTION TO QUASH  
DEPOSITION SUBPOENA FOR  
PRODUCTION OF BUSINESS RECORDS  
TO VLADIMIR DRABKIN DBA 420SOFT**

[Imaged File]

Judge: Hon. Joel Wohlfeil  
Dept.: 73  
Date: August 24, 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 support  
2 of their motion to quash plaintiff Karl Beck's ("Plaintiff") Deposition Subpoena for Production of  
3 Business Records to Vladimir Drabkin dba 420 Soft ("Subpoena").

4 **I. STATEMENT OF FACTS**

5 420soft

6 In August 2015, PLPCC opened. (Declaration Of Adam Knopf In Support Of  
7 Defendants' Joint Motion To Quash Deposition Subpoena For Production Of Business Records  
8 To Vladimiar Drabkin dba 420soft ("Knopf Decl.") ¶ 8.) PLPCC uses 420soft as its point-of-sale  
9 system. (Knopf Decl. ¶ 9.) Every single transaction is tracked through 420soft, including but not  
10 limited to, every piece of inventory that comes into PLPCC and every purchase that goes out.  
11 (Id.) For every purchase that is made by a patient, 420soft tracks the patient's name, the date, the  
12 time, the payment amount, the payment method, the details of the transaction, the product  
13 purchased, and the amount of product purchased, the amount spent, the tax paid – state, city, and  
14 sales, and any notes about the patient or the purchase that the salesperson wants to add. (Knopf  
15 Decl. ¶ 10.)

17 On any given day, PLPCC can see upwards of 700 transactions. (Knopf Decl. ¶ 11.)  
18 With respect to 420soft's inventory information, it tracks every piece of inventory, the date of  
19 delivery, the unit cost, the unit price, the sales details of the individual product, the performance  
20 of the product at PLPCC, and whether the inventory is on the shelf or not. (Knopf Decl. ¶ 12.)

21 Providing access to the 420soft information would be the equivalent of allowing someone  
22 unfettered and invasive access to PLPCC's storefront, inventory, and financial records. (Knopf  
23 Decl. ¶ 13.) 420soft only provides what comes into PLPCC; it does not maintain records of  
24 payroll expenses, loan payments, management expenses, marketing expenses, and other payments  
25 made by PLPCC to operate the business. (Knopf Decl. ¶ 14.) To PLPCC's knowledge, 420soft  
26 will not allow a "Sales" Report for "Individual Transactions" to be produced without each  
27 patient's name being published in the report. (Knopf Decl. ¶ 15.) Doing so would require 420soft  
28

1 to view every patient’s name and then require them to redact each patient. (Id.)

2 The Subpoena

3 Plaintiff served Defendants with Requests for Production of Documents that amounted to  
4 a request to Defendants to produce everything in their possession. Plaintiff filed a motion to  
5 compel. The Court sustained Defendants objections with respect to the tax return privilege, the  
6 attorney client privilege, that the requests were overbroad, and noted the application of a qualified  
7 privileged related to bank statements. (Declaration of Tamara M. Leetham In Support Of  
8 Defendants’ Motion To Quash Deposition Subpoena For Production Of Business Records To  
9 Vladimir Drabkin dba 420soft (“Leetham Decl.”) Exhibits A, B.) The Subpoena suffers the same  
10 incurable infirmity as the Requests for Production e.g. it is grossly overbroad and violates the  
11 right of privacy. The Subpoena is also oppressive and unreasonable. The Subpoena’s impact is  
12 also the same as the Requests for Production e.g. it requires production of nearly every document  
13 related to PLPCC’s business. The only difference is the data is housed by a non-party and not  
14 Defendants. Because the Subpoena is grossly overbroad and violates privacy rights, Defendants  
15 respectfully request the Court grant the motion to quash.

16 **II. THE SUBPOENA CONSTITUTES IMPROPER PRE-CLASS CERTIFICATION**  
17 **DISCOVERY**

18 The Complaint was filed in October of 2017 and the Court approved Plaintiff’s opt-out  
19 notice in March of 2018. Plaintiff has not filed a motion for class certification and the class has  
20 yet to be certified. Despite the pre-class certification stage of litigation, Plaintiff’s Subpoena is his  
21 most invasive discovery demand yet. With regards to pre-class certification discovery, the  
22 Subpoena well exceeds the scope of pre-class certification discovery and should be quashed.  
23 “[C]ontact information regarding the identity of potential class members is generally  
24 discoverable, so that the lead plaintiff may learn the names of other persons who might assist in  
25 prosecuting the case. (*Bartold v. Glendale Federal Bank* (2000) 81 Cal.App.4th 816, 820–821,  
26 836; *Budget Finance Plan v. Superior Court* (1973) 34 Cal.App.3d 794, 799–800; Code Civ.  
27 Proc. § 2017.010.) Such disclosure involves no revelation of personal or business secrets, intimate  
28 activities, or similar private information, and threatens no undue intrusion into one's personal life,

1 such as mass-marketing efforts or unsolicited sales pitches. (*Pioneer Electronics (USA), Inc. v.*  
2 *Superior Court* (2007) 70 Cal.4th 360, 373.)

3 Here, Plaintiff seeks business secrets, vendor information, the intimate activities of the  
4 Defendants, and the purchasing details of each and every member of the pre-certified class. None  
5 of the information requested is related to the contact information of the prospective class and has  
6 no relevance in assisting Mr. Beck in learning the names of other persons that would assist him in  
7 prosecuting the case. The Subpoena is so vast in the request and potential production that it is the  
8 equivalent of allowing counsel for Plaintiff to walk into the Defendant's place of business and  
9 allow him unfettered access to every facet of the business, with no restrictions. A demand of this  
10 nature is generally abusive, overbroad and oppressive and is particularly egregious abuse of the  
11 discovery process in the pre-certification stage of this litigation. For this reason alone, the  
12 Subpoena should be quashed.

13 **III. THE SUBPOENA SHOULD BE QUASHED BECAUSE IT FAILS TO**  
14 **"REASONABLY PARTICULARIZE" EACH CATEGORY OF DOCUMENTS SOUGHT**

15 The category of documents sought must reasonably particularized from the standing of the  
16 party on whom the demand is made. (*Calcor Space Facility, Inc. v. Sup. Ct. (Thiem Indus., Inc.)*  
17 (1997) 53 Cal.App.4th 216, 222.) "The 'reasonably' in the statute implies a requirement such  
18 categories be reasonably particularized from the stand point of the party who is subjected to the  
19 burden of producing the materials. Any other interpretation places too great a burden on the party  
20 on whom the demand is made." (*Calcor Space Facility, Inc., supra*, 53 Cal.App.4th at 222.) A  
21 description of document categories may be held unreasonable where it bears no relationship to the  
22 manner in which the records are kept, and imposes on the subpoenaed party the burden of  
23 searching extensive files at many locations to see what it can find to fit the categories in the  
24 demand. (*Id.*) The categories of documents described in a business records subpoena were so  
25 broad that they asked for **everything in the custodian's possession** relating to the subject of the  
26 litigation; the subpoena was unduly burdensome and unenforceable. (*Id. At 223.*)

27 The Subpoena, in particular Request No. 1, requests everything related to PLPCC in his  
28 possession without limitation. This amounts to a complete free for all for Plaintiff. There is no

1 ascertainable limitation or boundary by which 420soft can produce and is not reasonably  
2 particularized as to how the records are kept. Request No. 2 is simply a regurgitation of Request  
3 No. 1, broken into subparts. Because the Subpoena fails to reasonably particularize the requests,  
4 the motion to quash should be granted.

5 **IV. THE COURT SHOULD QUASH THE SUBPOENA PURSUANT TO CODE OF**  
6 **CIVIL PROCEDURE SECTION 1987.1**

7 Code of Civil Procedure 1987.1(a) states:

8  
9 IF a subpoena requires the attendance of a witness or the production of books, documents,  
10 electronically stored information, or other things before a court, or at the trial of an issue  
11 therein, or at the taking of a deposition, the court, upon motion reasonably made by any  
12 person described in subdivision (b), or upon the court's own motion after giving counsel  
13 notice and opportunity to be heard, may make an order quashing the subpoena entirely,  
14 modifying it, or directing compliance with it upon those terms or conditions as the court  
15 shall declare, including protective orders. In addition, the court may make any other order  
16 as may be appropriate to protect the person from unreasonable or oppressive demands,  
17 including unreasonable violations of the right of privacy of the person.

18 Code of Civil Procedure 1987.1(b)(1) authorizes a party to make a motion pursuant to  
19 1987.1(a). Defendants, as parties, move to quash the Subpoena pursuant to 1987.1(a).

20 **III. THE SUBPOENA SHOULD BE QUASHED BECAUSE IT IS OVERBROAD,**  
21 **INVADES PRIVACY, AND IS OPPRESSIVE**

22 **A. The Subpoena Is Overbroad**

23 Although the scope of discovery is broad, it is not limitless. (*Calcor Space Facility, Inc.*  
24 *v. Superior. Ct.* (1997) 53 Cal.App.4th 216, 223. Matters are subject to discovery only if the  
25 matters are relevant to the subject matter of the litigation and are either themselves admissible or  
26 appear reasonably calculated to lead to the discovery of admissible evidence. (*Id.*; Code Civ.  
27 Proc. § 2017.010.) Notably, the burden rests upon the party seeking the discovery to provide  
28 evidence from which the court may determine these conditions are met. (*Calcor, supra*, 53  
Cal.App.4th at 224.) In this case, Plaintiff cannot meet his burden to show good cause to obtain  
information concerning matters that are outside the scope of the claims at issue in this litigation.

The Subpoena as served requires 420soft to compile and produce information regarding  
every single transaction from the day the dispensary opened in August 2015 through December

1 31, 2017, including all information related to those people who supplied medical cannabis to  
2 PLPCC, price, date, time, product, etc. This microlevel information is not necessary for Plaintiff  
3 to attempt to prove his case, particularly at the pre-certification stage of this litigation and the  
4 discovery is irrelevant to class certification as discussed above. Because the Subpoena literally  
5 asks for everything in 420soft’s possession related to PLPCC, it is grossly overbroad and should  
6 be quashed.

7 **B. Plaintiff Seeks Disclosure Of Documents And Information Protected By The**  
8 **Right To Privacy In California’s Constitution**

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

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

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

16 In this case, Defendants and third parties have legally protected interests in their  
17 information privacy e.g. their financial privacy and their qualified patients have a right to privacy.

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

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

24 Here, Defendants and third parties have a legally protected privacy interest. They also  
25 have a reasonable expectation of privacy under the circumstances. Defendants, *particularly the*  
26 *individual defendants*, and third parties in these circumstances would not expect to have details  
27 related to their finances disclosed to a man who purchased cannabis a handful of times at a  
28 dispensary. The Subpoena as served requires 420soft to produce every document related to

1 PLPCC which amounts to a request to compile and produce information regarding every single  
2 transaction from the day the dispensary opened in August 2015 through December 31, 2017,  
3 including all information related to those people who supplied medical cannabis to PLPCC, price,  
4 date, time, product, etc. Plaintiff's attempted invasion is serious in scope because it allows  
5 Plaintiff to have intimate and private non-party financial information. This is serious to third  
6 parties who have no control over how and the extent to which their information is viewed,  
7 analyzed, and disclosed. Plaintiff should not be allowed such an invasion and Defendants  
8 respectfully request the Court preclude this invasion by quashing the Subpoena.

9 2. PLPCC's Third-Party Qualified Patients And Caregivers Have A Right To  
10 Privacy

11 Plaintiff has indicated the Subpoena does not include the "Patient" column or any column  
12 that contains "Patient" name, address, phone number, drivers' license, date of birth,  
13 recommendation number, MMIC, SSMP, passport number, electronic mail address, physician  
14 information, or other individually identifiable "Patient" information. 420soft does not have the  
15 ability to filter this data point out of its program and would require a herculean, if not impossible,  
16 requirement to redact all of this information from the documents and information produced.  
17 Because this is oppressive, and the data cannot be produced without such an effort, the Subpoena  
18 should be quashed.

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

21 Plaintiff's Subpoena is a fishing expedition that is oppressive, burdensome, cumbersome,  
22 and unreasonable. "Oppression" means the ultimate effect of the burden of responding to the  
23 discovery is "incommensurate with the result sought. (*West Pico Furniture Corp. v. Superior*  
24 *Court* (1961) 56 Cal.2d 413.) In considering whether the discovery is unduly burdensome or  
25 expensive, the court takes into account "the needs of the case, the amount in controversy, and the  
26 importance of the issues at stake in the litigation." (*People v. Sarpas* (2014) 225 Cal.App.4th  
27 1539, 1552.)

28 Here, the burden of 420soft in responding, or producing every single record ever



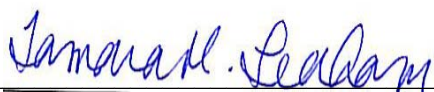
1 generated related to PLPCC, is incommensurate with the result sought. Again, this is particularly  
2 egregious in light of the pre-certification request and the fact that the “Patient” information  
3 cannot be filtered out of the requests unless it is done entry by entry. Defendants are not seeking  
4 to avoid any discovery or to gain any tactical advantage but instead seek to curtail “oppression”  
5 and “undue burden” by quashing the Subpoena or appropriately limiting its scope. The totality of  
6 the documents requested in the Subpoena amount to production of every single aspect of every  
7 transaction housed by 420soft from the day PLPCC opened to December 31, 2017. The  
8 Subpoena requests information about each of these transactions in multiple formats. It requests  
9 documents broken down by individual sales transactions, inventory logs, and cash register logs.  
10 Not only is this unreasonable, it is cumulative, and unduly burdensome and incommensurate with  
11 the result sought. The micro level of information is irrelevant and unnecessary to establishing  
12 liability and the Subpoena should be quashed.

13 **V. CONCLUSION**

14 For the foregoing reasons, Defendants respectfully request the Court enter an order  
15 quashing the Deposition Subpoena For Production Of Business Records To Vladimir Drabkin aka  
16 420soft.


17 Dated: July 20, 2018

AUSTIN LEGAL GROUP, APC

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23 Dated: July 20, 2018

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