

1 Gina M. Austin (SBN 246833)
E-mail: *gaustin@austinlegalgroup.com*
2 Tamara M. Leetham (SBN 234419)
E-mail: *tamara@austinlegalgroup.com*
3 AUSTIN LEGAL GROUP, APC
3990 Old Town Ave, Ste A-112
4 San Diego, CA 92110
Phone: (619) 924-9600
5 Facsimile: (619) 881-0045

6 Attorneys for Defendants
Point Loma Patients Consumer Cooperative,
7 Golden State Greens, LLC, Far West Management, LLC
Far West Operating, LLC, and Far West Staffing, LLC

8 MATTHEW B. DART (Bar No. 216429)

9 **DART LAW**
12526 High Bluff Dr., Suite 300
10 San Diego, CA 92101
Tel: 858.792.3616
11 Fax: 858.408.2900

12 Attorneys for Defendants 419 Consulting,
Adam Knopf, and Justus Henkes IV

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

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

07/27/2018 at 04:19:00 PM

Clerk of the Superior Court
By Richard Day, Deputy Clerk

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

**DECLARATION OF TAMARA LEETHAM
IN SUPPORT OF DEFENDANTS' JOINT
MOTION FOR JUDGMENT ON THE
PLEADINGS**

Judge: Hon. Joel Wohlfeil
Dept.: 73
Date: September 14, 2018
Time: 9:00 a.m.

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

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I, Tamara M. Leetham, declare as follows:

1. I am attorney admitted to practice before this Court and all California courts. I, along with co-counsel Matthew Dart, represent defendants in this matter. I make this declaration in support of Defendant's Joint Motion for Judgment On the Pleadings. Unless otherwise stated, all facts testified to are within my personal knowledge and, if called as a witness, I would and could competently testify to them.

2. Along with Matthew Dart, I am responsible for all aspects of representing the defendants in this case. My responsibilities include drafting and filing pleadings, corresponding with opposing counsel, supervising other attorney work, and overall case strategy. I am familiar with the pleadings and files in this case and have reviewed them on behalf of defendants.

3. On July 18, 2018, I sent a meet and confer letter to William Restis, counsel for plaintiff Karl Beck, regarding the filing of Defendant' Motion for Judgment on the Pleadings, as required by Code of Civil Procedure section 439. A true and correct copy of my letter is attached as Exhibit A and incorporated by reference. Matthew Dart and I thereafter met and conferred with Mr. Restis on July 24, 2018 regarding the contents of my letter.

4. As of the date of this declaration, July 27, Plaintiff and Defendants have been unable to reach an agreement resolving the objections raised in Defendants' motion for judgment on the pleadings.

I declare under penalty of perjury under California state law that the foregoing is true and correct.

Dated: July 27, 2018

By: Tamara M. Leetham

Exhibit A

Austin Legal Group
LAWYERS
3990 OLD TOWN AVE, STE A-112
SAN DIEGO, CA 92110

LICENSED IN CALIFORNIA & HAWAII
TELEPHONE
(619) 924-9600

FACSIMILE
(619) 881-0045

Writer's Email:
tamara@austinlegalgroup.com

July 18, 2018

William Restis, Esq.
The Restis Law Firm
550 W. C Street, Suite 1760
San Diego, CA 92101
william@restislaw.com

Via E-mail Only

Re: Meet And Confer Letter
Beck v. PLPCC, et al.
Case No. 37-2017-00037524-CU-BT-CTL

Dear Mr. Restis,

This letter constitutes Defendants' meet and confer effort pursuant to Code of Civil Procedure section 439(a), to determine if an agreement can be reached that would resolve the objection Defendants will raise in their joint motion for judgment on the pleadings ("MJOP") to the Complaint.

Code of Civil Procedure section 439(a) requires that the parties meet and confer at least five days for the MJOP is filed and our intention is to file the MJOP on or before July 27, 2018. To comply with this requirement, we therefore propose a telephone conference for July 24, 2018 at 4:00 p.m. by calling my office at (619) 924-9600.

Matt and I are available to meet in person at my office if you prefer. In advance of this meeting, this letter serves as notice that the Complaint fails as a matter of law because it requests relief that cannot, by law, be granted.

A. The Complaint's Improper Allegations

PLPCC operates a medical marijuana storefront dispensary with a conditional use permit from the City of San Diego. (Complaint ¶¶ 21-22.) The Complaint alleges that PLPCC is the largest and most successful medical marijuana dispensary in San Diego County, serving thousands daily and generating millions of dollars in monthly revenue. (Complaint ¶ 36.) It is also alleges that despite its huge revenues, PLPCC has never made a "patronage distribution" to Plaintiff or any Class member, (Complaint ¶ 37) and that the Individual Defendants used all entity defendants other than PLPCC to unlawfully divert funds and hide substantial revenues from the **illegal for-profit** sale of medical marijuana, to avoid showing a **profit**, and avoid paying patronage distributions to Plaintiff and the Class, and that funds distributed by PLPCC to the other Defendants are far in excess of any reasonable

compensation for services provided and out-of-pocket expenses. (Complaint ¶¶ 14, 38-39, 71.) (emphasis added.)

The Complaint alleges that the MMPA “bars **individuals** and any collective, cooperative, or other group from transforming medical marijuana projects authorized under the MMPA into for-profit enterprises (prior to January 1, 2018). (Complaint ¶ 29.) Plaintiff specifically cites to Health and Safety Code section 11362.765(a) which provides that neither the CUA or MMPA “authorize any individual or group to cultivate or distribute cannabis for profit.” Complaint ¶ 31.)

The Complaint further alleges that the 2008 California Attorney General and Department of Justice *Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use* have the stated purpose of helping patients and law enforcement understand their rights and duties for the cultivation, sale and use of medical marijuana under California law. (Complaint ¶ 30.)

The Complaint further alleges that your client and the proposed class have a strong interest in ensuring that PLPCC is operating in conformity with California’s medical marijuana laws. (Complaint ¶¶ 5, 18.)

Plaintiff and the Class are member patrons of PLPCC that would be entitled to patronage distributions (a kind of dividend for cooperative members) but for individual defendants Adam Knopf and Justus Henkes’ diversion of the revenue to themselves and other defendants. (Complaint ¶ 9.)

B. The Complaint’s Request For Relief Violates The Law

Plaintiff’s requested relief, for his share of PLPCC’s purported profits, and damages relating to Defendants’ purported retention of those profits, violates California law. The Complaint demands monetary distributions to Plaintiff and PLPCC’s “members” pursuant to the Corporations Code. However, Plaintiff’s receipt of profits is predicated on PLPCC’s violation of the MMPA and the non-binding AG Guidelines. Specifically, for PLPCC members to receive profits, PLPCC must directly violate the MMPA by allowing individuals to profit from the sale and distribution of medical marijuana.

As outlined below, the Corporations Code may allow some form of distribution to members or patrons of a statutory consumer cooperative. This case is not illustrative of such a circumstance. The facts of this case, as plead in the Complaint, demonstrate Plaintiff is not permitted to receive any distributions from any profits from a statutory cooperative operating pursuant to the Medical Marijuana Program as it would be a violation of Health and Safety Code section 11326.765 and relevant case law. Because California law precludes Plaintiff and Defendants from legally earning a profit, then it logically follows that Plaintiff has no legal entitlement to any distributions that PLPCC might authorize or legal entitlement to forced distributions.

1. California Cooperative Law Allows Permissive Patronage Distributions

PLPCC was formed as a statutory cooperative corporation, one of the corporate forms mentioned in the AG Guidelines. (See AG Guidelines IV A1.) Statutory cooperative corporations are governed by Corporations Code section 12200 et seq. Of relevance here, Corporations Code section 12201 states that “[t]he earnings, savings, or benefits of the corporation shall be used for the general welfare of the members or shall be proportionately and equitably distributed to some or all of its members or its patrons, based upon their patronage (section 12243) of the corporation, in the form of cash, property, evidences of indebtedness, capital credits, memberships, or services.” This section does not mandate payment of distributions and Plaintiff has no legal basis to compel payment of distributions pursuant to the Cooperative Corporation law.

2. The MMPA Precludes Profits From Medical Marijuana

In 2003, the California Legislature enacted the MMPA, effective January 1, 2004, adding sections 11362.5 through 11362.83 to the Health and Safety Code. (*People v. Wright* (2006) 40 Cal.4th 81, 93.) The Legislature’s express intent was to (1) Clarify the scope of the application of the Compassionate Use Act (“CUA”) and facilitate the prompt identification of qualified patients and their designated primary caregivers in order to avoid unnecessary arrest and prosecution of these individuals and provide needed guidance to law enforcement officers; (2) Promote uniform and consistent application of the CUA among the counties within the state; (3) Enhance the access of patients and caregivers to medical marijuana through collective, cooperative cultivation projects. It was also the Legislature’s intent to address additional issues that were not included within the CUA and that required resolution to promote the fair and orderly implementation of the CUA. (Stats.2003, ch. 875, § 1, subd. (b)(1)-(3), (c), italics added.)

Nothing in the MMPA authorizes any group or individual to cultivate or distribute marijuana for profit. (Health & Saf. Code § 11362.765(a) (“nothing in this section shall authorize . . . any individual or group to cultivate or distribute marijuana for profit”).) The MMPA’s plain language explicitly prevents what Plaintiff requests – disbursement of PROFITS from PLPCC’s sale of medical marijuana. Because the MMPA precludes profit from the cultivation or distribution of marijuana, should any profit result from the cultivation or distribution of marijuana, it would violate Health and Safety Code section 11362.765(a) for any person to receive such profits or any portion thereof. Therefore, Plaintiff and the proposed class are not, and cannot be, entitled to profits and this Motion should be sustained without leave to amend.

3. The AG Guidelines Are Not Binding Law And Plaintiff’s Reliance On Them As A Basis For Relief Is Improper

The MMPA at Health and Safety Code section 11362.81(d) requires the Attorney General to develop and adopt appropriate guidelines to ensure the security and non-diversion of marijuana grown

for medical use by patients qualified under the CUA. In 2008, as required by the MMPA, California Attorney General Edmund G. Brown Jr. released guidelines that clarified California's Proposition 215 for the first time since it was passed in 1996. Although the Attorney General's views are entitled to considerable weight, they are not binding. (*Freedom Newspapers, Inc. v. Orange County Employees Retirement System* (1993) 6 Cal.4th 821, 829; *Unger v. Superior Court* (1980) 102 Cal.App.3d 681, 688; *Meyer v. Board of Trustees* (1961) 195 Cal.App.2d 420, 431.)

The AG Guidelines stated purpose is to "(1) ensure that marijuana grown for medical purposes remains secure and does not find its way to non-patients or illicit markets, (2) help law enforcement agencies perform their duties effectively and in accordance with California law, and (3) help patients and primary caregivers understand how they may cultivate, transport, possess, and use medical marijuana under California law." (AG Guidelines, p. 1.) Among other things, the AG Guidelines articulate requirements for the lawful operation of nonprofit cooperatives and collectives for the collective cultivation of medical marijuana by qualified patients. (AG Guidelines, p. 8.)

The AG Guidelines also address the issue of "dispensaries." The Attorney General stated that "while dispensaries, as such, are not recognized under the law, a properly organized and operated collective or cooperative that dispenses medical marijuana through a storefront may be lawful under California law, but dispensaries that do not substantially comply with the guidelines [covering collectives and cooperatives] are likely operating outside the protections of the CUA and the MMPA"

Although you reference the AG Guidelines, you have failed to cite caselaw to enforce the AG Guidelines as an appropriate consideration for your claims. Your reliance is misplaced as the AG Guidelines do not create a private right of action. First, the AG Guidelines are non-binding. Second, as cited above, the AG Guidelines were issued to "(1) ensure that marijuana grown for medical purposes remains secure and does not find its way to non-patients or illicit markets, (2) help law enforcement agencies perform their duties effectively and in accordance with California law, and (3) help patients and primary caregivers understand how they may cultivate, transport, possess, and use medical marijuana under California law."

Further, the AG Guidelines are internally inconsistent. While Section VI(B)(1) states "[n]othing in Proposition 215 or the MMP authorizes collectives, cooperatives, or **individuals** to profit from the sale or distribution of marijuana" (see e.g. Health § Saf. Code 11362.765(a), Section VI(A)(1) speaks to Statutory Cooperatives in that they are "not organized to make a profit for themselves, as such, or for their members, as such, but primarily for their members as patrons." These two sections are inconsistent and cannot be reconciled. Nothing in the MMPA allows anyone to receive profits from the distribution of marijuana, and that would include any distribution of profits from a Statutory Cooperative to its members and "patrons." Therefore, Health and Safety Code section 11362.765 trumps Plaintiff's assertion he, or any proposed class member, are entitled to any patronage distribution in the form of profits made by any statutory cooperative operating pursuant to the MMPA, the Corporations Code sections governing patronage distributions by statutory cooperatives notwithstanding.

William Restis
July 18, 2018
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Your legal theory is predicated on the unsupportable position that the AG Guidelines create a private right of action and that the AG Guidelines somehow supersede the Health and Safety Code. Because your legal theory cannot be reconciled with legal authority that your client is entitled to profits, the claims fail as a matter of law. Put another way, your client's request for relief, if granted would cause PLPCC to violate the law.

C. The Complaint Admits Plaintiff Is Not Entitled To Profits

The Complaint alleges that the MMPA “bars **individuals** and any collective, cooperative, or other group from transforming medical marijuana projects authorized under the MMPA into for-profit enterprises (prior to January 1, 2018). (Complaint ¶ 29.) The Complaint specifically cites to Health and Safety Code section 11362.765(a) which provides that neither the CUA or MMPA “authorize any individual or group to cultivate or distribute cannabis for profit” (Complaint ¶ 31), the same code section upon which Defendants’ rely in making this motion.

D. Conclusion

We believe these issues are fatal to the Complaint. However, to avoid the motion for judgment on the pleadings, we request that you provide us with legal authority that supports your position that the Complaint in its current form is legally sufficient.

Thank you,

AUSTIN LEGAL GROUP, APC

Tamara M. Leetham

Tamara M. Leetham